

VOLUME 3
TECHNICAL APPENDICES

**The Disposition of Nebraska Capital and
Non-Capital Homicide Cases (1973-1999):
A Legal and Empirical Analysis**

David C. Baldus
George Woodworth
Gary L. Young
Aaron M. Christ

July 25, 2001

Technical Appendix A

Initial Screening Instrument (I.S.I.) and Coding Protocol Manual

**NEBRASKA CRIMINAL HOMICIDE REVIEW PROJECT
INITIAL SCREENING INSTRUMENT ("ISI")**

May 15, 2000

(Refer to ISI Coding Protocol)

Q1 Master List Case Number _____ Status in Project _____
 _____/_____/_____/_____/_____/_____ X1
 1 = Clearly In
 2 = Possibly In
 3 = Clearly Out

		Last	First	M.I.	Suffix
Q2	Offender's Name (Print Clearly)	X3	X4	X5	X6

Q2A Offender's Date of Birth Month Day Year

____/____ -- ____/____ -- ____/____/____/____
X7

If date and month are unknown, code it to the extent known. If year is unknown, code it 9999.

Month Day Year

Q3 Date of Offense ____ / ____ -- ____ / ____ -- ____ / ____ / ____ / ____
X8

If date and month are unknown, code it to the extent known. If year is unknown, code it 9999.

Q4 Date of Guilt Trial Conviction _____/_____/____ -- ____/____/____ -- ____/____/____/____
X9

Code the date of guilt trial conviction. If date and month are unknown, code to the extent known. If year is unknown, code it 9999.

Q5 Date of Start of Penalty Trial _____/_____/____ -- ____/____/____ -- ____/____/____/____
X10

Code year and month. If date and month are unknown, code to extent known. If year unknown, code 9999.

Q6 Date Sentence Imposed _____/_____/____ -- ____/____/____ -- ____/____/____/____
X10A

In penalty trial cases, date of life/death judgment entered. If date and month are unknown, code to extent known. If year unknown, code 9999.

Q7 County Name _____ County Code ____/_____
X11 V12

Q8 Prosecutor's Last Name _____
X13

Q9 Prosecutor's Ph. #:
____/____/____/-____/____/____/-____/____/____/____ X13A

(See Prosecutor List) If unknown, code last entry with a zero

Q10 Defense Counsel's Name _____
X14 X15

Q11 Defense Counsel's Ph. #:
____/____/____/-____/____/____/-____/____/____/____ X16

(See Defense Attorney List) If unknown, code last entry zero

Q12 Original Homicide Charge: Codes for Questions 12 and 13
1 = First Degree Murder X17
2 = 2nd Degree Murder
3 = Manslaughter
Q13 Crime of Conviction: 4 = Homicidal Child Abuse
5 = Other _____ X18
6 = No conviction
9 = unknown

Q14 Basis for Conviction: _____ X19
1 = Plea
2 = Jury trial verdict
3 = Bench trial judgment

4 = Trial, but unknown if tried to bench or to jury

9 = Basis for conviction unknown

Q15 Was there a penalty trial?

0 = No

1 = Yes

8 = Not applicable because no first degree murder conviction

9 = unknown if there was a penalty trial

X20

Q16 If there was a penalty trial, statutory aggravators found:

X21

1 = 1 or more aggravating factors presented by prosecution and found

2 = 1 or more aggravating factors presented but none found

3 = Other, specify _____

7 = No penalty trial

8 = Unknown if there was a penalty trial

9 = Penalty trial, but findings unknown

Q17 Prior Homicide Convictions. Has Defendant been convicted for a prior homicide?

X22

0 = No prior homicide convictions

1-8 = Number of convictions for prior homicides

9 = Unknown if defendant had a prior homicide conviction.

1. List case numbers for prior homicide convictions (starting with earliest known)

____/____/____/____/____
X23

If the Master List Case Numbers (X1 on each ISI) for known prior homicide convictions are unknown, code a 9 in the last entry block applicable. If there were more than two prior homicides, list numbers on attached note sheets.

____/____/____/____/____
X24

Q18 Prior Guilt Conviction(s) for this homicide as a result of trials or pleas:

X25

0 = Not applicable because there was no prior conviction

2-7 = Sequence number if this is a subsequent conviction

9 = Unknown if a prior conviction

Q19 If there was a prior conviction for this homicide, indicate the Master Case List number for the first conviction (See Master Case List for the numbers)

X26 ____/____/____/____/____

- 0 = Not applicable because there was no prior conviction
 8 = Prior conviction, but the case number of the first conviction is unknown
 9 = Unknown if there was a prior conviction

Q20 Prior Penalty trial(s) for this 1st degree murder conviction X27 _____

- 0 = not applicable because there was no 1st degree Murder conviction
 1 = First penalty trial for this homicide
 2-7 = Sequence number if this is a subsequent penalty trial
 9 = 1st degree murder conviction, but unknown whether there was a prior penalty trial

Q21 If there was a prior penalty trial(s) for this homicide, enter the Master List Case case numbers (X1) for them. (See Master List)

____/____/____/____/____
 X28

two ____/____/____/____/____
 X29

____/____/____/____/____
 X30

____/____/____/____/____
 X31

If the Master List Case Numbers (X1 on each ISI) for known prior/subsequent penalty trial(s) is unknown, code a 9 in the last entry block applicable. If there were more than prior homicides, list numbers on attached note sheets.

Q22 Mens Rea for First Degree Murder : _____
 (See ISI Protocol for Definition of Mens Rea for First Degree Murder) X32

- 1 = Yes (clearly present)
 2 = questionable
 3 = No (clearly not present)
 9 = unknown

Q23 Sentence _____
 X33

- | | |
|-------------------|-------------------|
| 1 = Death | 4 = other |
| 2 = Life | 5 = No conviction |
| 3 = Term of Years | 9 = unknown |

Q24 If the sentence was a term of years, what was the minimum and maximum term?

Minimum /____/____/ to Maximum /____/____/

Q25 Number of Co-Perpetrators:

X36

0 = If there were no Co-Perpetrators

1-7 = Number of Co-Perpetrators

8 = There were Co-Perpetrators but the number is unknown

9 = Unknown whether there were Co-Perpetrators

Q26 Name(s) and Status of Co-Perpetrators:

If there were no co-perpetrators, leave the Last Name variables blank. If Master List Case number is unknown, or it is unknown if a case exists, code 9 in the last case number block. If the Co-Perpetrator was not charged with a homicide, code 8 in the last case number block.

	A	B	C
1.	Co-Perpetrator's Last Name	Co-Perpetrator's Master List Case Number	Co-Perpetrator's Status
	#1 _____ X37	____/____/____/____/____ X38	_____ X39
2.	Co-Perpetrator/Co-Defendant's Last Name	Co-Perpetrator's Master List Case Number	Co-Perpetrator's Status
	#2 _____ X40	____/____/____/____/____ X41	_____ X42
3.	Co-Perpetrator/Co-Defendant's Last Name	Co-Perpetrator's Master List Case Number	Co-Perpetrator's Status
	#3 _____ X43	____/____/____/____/____ X44	_____ X45
4.	Co-Perpetrator/Co-Defendant's Last Name	Co-Perpetrator's Master List Case Number	Co-Perpetrator's Status
	#4 _____ X46	____/____/____/____/____ X47	_____ X48

For Column C (Co-Perpetrators's Status) code as follows:

1 = Defendant and Co-Perpetrator were charged together and tried together

2 = Co-Perpetrator was charged with the Defendant but entered a plea or was tried separately from

the Defendant

3 = Co-Perpetrator was not charged

4 = Other _____ (specify)

5 = Co-Perpetrator was charged only with a non-homicide charge

9 = unknown

If there are additional co-perpetrators, list the information on the attached note sheets.

X. STATUTORY AGGRAVATING CIRCUMSTANCES

Q27 Answer these questions in all cases.

Column A

(Where Penalty Trial was held).

1 = Statutory factor presented and found by fact-finder

2 = Statutory factor presented at penalty hearing but not found by fact-finder

3 = Unknown whether the factor was presented at penalty hearing

4 = Facts support a finding of factor (Evidence = 1 or 2 -- see below), but factor not presented

5 = Factor presented and verdict reached, but unknown if found

6 = Unknown if present

7 = Unknown if a penalty trial was held

Blank = Factor not present

(Where Penalty Trial was not held)

8 = Facts support a finding of the factor.

9 = Unknown if factor was present

Blank = Not applicable because no indication factor was present

Column B (Evidence) (Answer for all cases).

1 = Strong - Elements clearly made out and no issue as to reliability of evidence.

2 = Legally sufficient - Facts are legally sufficient to establish the aggravating factor, but a reasonable fact-finder, in exercise of discretion, could find the circumstance either present or not present in the case; and no issue of reliability of evidence.

3 = Sufficient, with evidentiary issue(s) - Facts are legally sufficient to establish the aggravating factor, but such a finding rests on acceptance of evidence that is controverted or of questionable reliability.

4 = Insufficient - Some evidence of the aggravating factor, but even if accepted, it would not survive a sufficiency challenge.

Blank = Not applicable because no indication that the factor was present.

	Col. A. (Procedure)	Col. B. (Evid.)
The Defendant was previously convicted of another murder or a crime involving the use or threat of violence to the person [Neb. Rev. Stat. § 29-2523(1)(a)];	X49 _____	V61 _____
The Defendant had a substantial history of serious assaultive or terrorizing criminal activity [Neb. Rev. Stat. § 29-2523(1)(a)]	X50 _____	X62 _____

	<u>Col. A. (Procedure)</u>	<u>Col. B. (Evid.)</u>
The murder was committed with an apparent effort to conceal the commission of a crime [Neb. Rev. Stat. § 29-2523(1)(b)]	X51____	X63____
The murder was committed with an apparent effort to conceal the identity of the perpetrator of a crime [Neb. Rev. Stat. § 29-2523(1)(b)]	X52____	X64____
The murder was committed for hire, or for pecuniary gain [Neb. Rev. Stat. § 29-2523(1)(c)]	X53____	X65____
The Defendant hired another to commit the murder for the Defendant [Neb. Rev. Stat. § 29-2523(1)(c)]	X54____	X66____
The murder was especially heinous, atrocious, cruel, or manifested exceptional depravity by ordinary standards of morality and intelligence [Neb. Rev. Stat. § 29-2523(1)(d)]	X55____	X67____
At the time the murder was committed, the Defendant also committed another murder [Neb. Rev. Stat. § 29-2523(1)(e)]	X56____	X68____
The Defendant knowingly created a great risk of death to at least several persons [Neb. Rev. Stat. § 29-2523(1)(f)]	X57____	X69____
The victim was a law enforcement officer or a public servant having the custody of the Defendant or another [Neb. Rev. Stat. § 29-2523(1)(g). Victim's title:	X58____	X70____
The Defendant committed the crime to disrupt or hinder the lawful exercise of any governmental function or the enforcement of the laws [Neb. Rev. Stat. § 29-2523(1)(h)]	X59____	X71____
Victim was a law enforcement officer engaged in the lawful performance of his or her official duties as a law enforcement officer and the offender knew or reasonably should have known that the victim was a law enforcement officer. (ONLY for homicides committed AFTER JULY 15, 1998) [Neb. Rev. Stat. § 29-2523(1)(i)]	X60____	X72____

Q28 MITIGATING CIRCUMSTANCES

ONLY Code for cases where there was a penalty trial.

Column A

- 1 = Presented and found
- 2 = Presented and not found
- 3 = Presented but not reached because no aggravating circumstance found
- 4 = Unknown if presented, but penalty hearing held, and court held that factor did not exist
- 8 = Presented, but unknown if factor found
- 9 = Unknown if a penalty trial held
- Blank = No indication factor was presented

	<u>Col. A</u> <u>(Procedure)</u>
A. The Defendant has no significant history of prior criminal activity [Neb. Rev. Stat. § 29-2523(2)(a)]	X73 _____
B. The Defendant acted under unusual pressures or influences or under the domination of another person [Neb. Rev. Stat. § 29-2523(2)(b)]	X74 _____
C. The Defendant committed the crime while the Defendant was under the influence of extreme mental or emotional disturbance [Neb. Rev. Stat. § 29-2523(2)(c)]	X75 _____
D. The age of the defendant at the time of the crime [Neb. Rev. Stat. § 29-2523(2)(d)]	X76 _____
E. The offender was an accomplice in the crime committed by another person and his participation was relatively minor [Neb. Rev. Stat. § 29-2523(2)(e)]	X77 _____
F. The victim was a participant in the Defendant's conduct or consented to the act [Neb. Rev. Stat. § 29-2523(2)(f)]	X78 _____
G. At the time of the crime, the capacity of the Defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was impaired as a result of mental illness, mental defect or intoxication [Neb. Rev. Stat. § 29-2523(2)(g)]	X79 _____
8. Non-Statutory Mitigation	X80 _____

Coding for Non-Statutory Mitigation

- 5 = Court indicates that evidence of non-statutory mitigation was presented and considered
- 6 = Court indicates that NO evidence of non-statutory mitigation was presented
- 9 = unknown whether non-statutory mitigation was presented

Q29 Otherwise Excluded (i.e. case is excluded from further analysis on a categorical basis other than lack of evidence of death eligibility) X81 ____

1 = RESERVED
2 = RESERVED
9 = not applicable

Q30 Defendant's sex: 1 = Male 0 = Female 9 = Unknown X82 ____

Q31 Defendant's race: X83 ____

1 = White 4 = Native American
2 = African American 6 = Other (specify) _____
3 = Asian 9 = unknown

Q32 Is Defendant Hispanic? X84 ____

1 = Yes
2 = No
3 = Spanish surname, but unknown if Hispanic
4 = Unknown

Q33 Defendant's Religious Preference at time of homicide: X85 ____

1 = Roman Catholic 9 = Odinist/Asatru
2 = Lutheran 10 = Native American religion
3 = Presbyterian _____
4 = Methodist (specify)
5 = Baptist 11 = Islamic/Muslim
6 = Christian (generally stated) 12 = Buddhist
7 = Jewish 13 = Atheist
8 = Mormon (LDS) 14 = Agnostic

15 = Other _____
88 = Has a religious preference, but identity of religious preference is unknown
99 = unknown if defendant has a religious preference

Economic Status of Defendant:

Q34 What was the defendant's primary and, if applicable, secondary occupational skill at the time of the homicide? If the respondent knows the precise skill, enter code from the indented list. If only the general category is known, enter code for the major heading, e.g., if other white-collar, code 30.

10 = Professional and Managerial

Primary
X86

11 = Professional (doctor, lawyer, etc.)

12 = Executive, business person

13 = Small business/farm owner

14 = Judge, legislator

Secondary
X87

20 = Law Enforcement and Military

21 = Police officer, firefighter, corrections officer

22 = Military (enlisted)

23 = Military (officer)

30 = White-collar

31 = Office worker

32 = Apartment/hotel manager

33 = Store manager

34 = Secretary

35 = Any government officer or employee

40 = Blue-Collar and Unskilled

41 = Blue-collar (all skilled laborers will be considered blue collar; e.g.,
mechanics, factory workers, truck drivers)

42 = Farmer, fisher, farm worker

43 = Unskilled laborer

50 = Service Workers

51 = Security guard

52 = Store clerk

53 = Service station attendant

54 = Waiter, waitress, bartender, taxi driver, or similar

55 = Domestic

56 = Custodian

60 = Unstable or Extralegal

61 = Drifter

62 = Professional criminal (organized crime)

63 = Prostitute or pimp

64 = Thief (individual criminal)

65 = Drug dealer

66 = Sporadic odd jobs, no particular skill

70 = Outside of Labor Force

71 = Juvenile, out of school

72 = Student

73 = Retired

74 = Housekeeper supported by spouse or other family

75 = Chronically unemployed (includes recipient of public assistance)

76 = Disabled

80 = Other, outside the foregoing categories (specify) _____

98 = Defendant has worked but precise skill is unknown

99 = Unknown whether defendant has ever worked at all

Q35 Defendant's employment history? X88 _____

- 1 = Never worked
- 2 = Held unskilled jobs in the past
- 3 = Held skilled jobs in the past
- 4 = Held professional or managerial or white collar jobs in the past
- 5 = Other: _____ (specify)
- 9 = Unknown

Q36 Defendant's education? X89 _____

- 0 = Currently attending school (grade 1-12).
- 1 = Didn't go beyond 4th grade
- 2 = Didn't go beyond 8th grade
- 3 = High school dropout
- 4 = Graduated high school or got GED
- 5 = Some higher education after high school
- 6 = College degree
- 7 = Graduate school
- 8 = Vocational training
- 9 = Unknown

Q37 Total number of victims killed during the commission of the homicide for which the Defendant was convicted. X90 _____

- 1-6 = Enter the actual number of victims
- 8 = Multiple victims but actual number unknown
- 9 = Unknown if there were multiple victims

Q38 Victim Race, Ethnicity Gender, Religion and Age

A	B Last Name	C Race	D Ethnicity	E Gender	F Religion	G Age
Primary Victim	<u> </u> X91	<u> </u> X92	<u> </u> X93	<u> </u> X94	<u> </u> X95	<u> </u> X96
Second Victim	<u> </u> X97	<u> </u> X98	<u> </u> X99	<u> </u> X100	<u> </u> X101	<u> </u> X102
Third Victim	<u> </u> X103	<u> </u> X104	<u> </u> X105	<u> </u> X106	<u> </u> X107	<u> </u> X108
Fourth Victim	<u> </u> X109	<u> </u> X110	<u> </u> X111	<u> </u> X112	<u> </u> X113	<u> </u> X114
Fifth Victim	<u> </u> X115	<u> </u> X116	<u> </u> X117	<u> </u> X118	<u> </u> X119	<u> </u> X120

The "Primary Victim" is the victim whose murder was the most aggravated. If this is not clear, enter alphabetically by last name if known. Beyond primary victim enter alphabetically by last name, if known. If there are more than 5 victims, enter the additional items on a comment sheet and attach it to the ISI.

CODING FOR RACE (Col. C):

1 = White

2 = African American

3 = Asian

4 = Native American

6 = Other (specify)

9 = Unknown

CODING FOR ETHNICITY. Is Victim Hispanic? (Col. D)

1 = Yes

3 = Spanish surname, but unknown if Hispanic

2 = No

9 = Unknown

CODING FOR GENDER. (Col. E)

1 = Male

0 = Female

9 = Unknown

CODING FOR RELIGIOUS PREFERENCE (Col. F).

1 = Roman Catholic

2 = Lutheran

3 = Presbyterian

4 = Methodist

5 = Baptist

6 = Christian (generally stated)

7 = Jewish

8 = Mormon (LDS)

9 = Odinist/Asatru

10 = Native American religion

(specify)

11 = Islamic/Muslim

12 = Buddhist

13 = Atheist

14 = Agnostic

88 = Victim has a religious preference, but identity of preference is unknown

99 = unknown if Victim has a religious preference

d = adult (20-65)

e = aged

blank = unknown

CODING FOR AGE (Col. G).

0-99 Actual Age at death

a = pre-school (under 6)

b = child (6-12)

c = teenager

15 = Other

Economic Status of Primary Victim:

Q39 What was the Primary Victim's primary and, if applicable, secondary occupational skill at the time of the homicide? If the respondent knows the precise skill, enter code from the indented list. If only the general category is known, enter code for the major heading, e.g., if other white-collar, code 30. The "Primary Victim" is the victim whose murder was the most aggravated. If this is not clear, enter the first victim alphabetically by last name if known.

10 = Professional and Managerial

Primary
X121

11 = Professional (doctor, lawyer, etc.)

12 = Executive, business person

13 = Small business/farm owner

14 = Judge, legislator

Secondary
X122

20 = Law Enforcement and Military

21 = Police officer, firefighter, corrections officer

22 = Military (enlisted)

23 = Military (officer)

30 = White-collar

31 = Office worker

32 = Apartment/hotel manager

33 = Store manager

34 = Secretary

35 = Any government officer or employee

40 = Blue-Collar and Unskilled

41 = Blue-collar (all skilled laborers will be considered blue collar; e.g., mechanics, factory workers, truck drivers)

42 = Farmer, fisher, farm worker

43 = Unskilled laborer

50 = Service Workers

51 = Security guard

52 = Store clerk

53 = Service station attendant

54 = Waiter, waitress, bartender, taxi driver, or similar

55 = Domestic

56 = Custodian

60 = Unstable or Extralegal

61 = Drifter

62 = Professional criminal (organized crime)

63 = Prostitute or pimp

64 = Thief (individual criminal)

65 = Drug dealer

66 = Sporadic odd jobs, no particular skill

70 = Outside of Labor Force

71 = Juvenile, out of school

72 = Student

73 = Retired

74 = Housekeeper supported by spouse or other family

75 = Chronically unemployed (includes recipient of public assistance)

76 = Disabled

80 = Other, outside the foregoing categories (specify) _____

98 = Victim has worked but precise skill is unknown

99 = Unknown whether Victim has ever worked at all

Q40 Primary Victim's employment history?

X123 _____

- 1 = Never worked
- 2 = Held unskilled jobs in the past
- 3 = Held skilled jobs in the past
- 4 = Held professional or managerial or white collar jobs in the past
- 5 = Other _____(specify)
- 9 = Unknown

Q41 Primary Victim's education? X124_____

- 0 = Currently attending school (grade 1-12).
- 1 = Didn't go beyond 4th grade
- 2 = Didn't go beyond 8th grade
- 3 = High school dropout
- 4 = Graduated high school or got GED
- 5 = Some higher education after high school
- 6 = College degree
- 7 = Graduate school
- 8 = Vocational training
- 9 = Unknown

Q42-52 Sources consulted.

Use the following codes to answer questions 42-52:

- 0 = This source was NOT consulted.
- 1 = This source was consulted.

Q42	Presentence Investigation ("PSI")Report	X125_____
Q43	DCC Classification Study	X126_____
Q44	Information	X127_____
Q45	Sentencing Order	X128_____
Q46	Police Report	X129_____
Q47	Autopsy Report	X130_____
Q48	Trial Court Opinion	X131_____
Q49	Appellate Court Opinion	X132_____
Q50	Death Certificate of Victim(s)	X133_____
Q51	Affidavit for Probable Cause for Arrest or Search Warrant	X134_____

Q52 Other (Specify) _____ X135 _____

Q53 Date Coded ____/____ -- ____/____/ - ____/____/____/____

Q54 Coder ID# _____. (See Coder List)

Q55 Coder Last Name _____

X136

THUMBNAIL SKETCH

Thumbnail sketch of facts. See protocol for a description of what should be included in each thumbnail sketch. (Limit of 240 Characters including spaces between words.) Do not use slashes or semi-colons. Also, do not include any non-legitimate factors in description. For a list of non-legitimate factors, see protocol.

CODERS SHOULD STAPLE A COMMENT SHEET TO THE ISI IF THERE IS ANY ADDITIONAL CASE DESCRIPTION.

© 2000 All rights reserved.

NEBRASKA CRIMINAL HOMICIDE REVIEW STUDY

Initial Screening Instrument
Coding Protocol Manual

KEATING, O'GARA, DAVIS & NEDVED, P.C.
530 South 13th, Suite A
Lincoln, Nebraska 68508

Nebraska Criminal Homicide Review

A. The Purpose of Screening

These instructions are for law-trained coders who are assigned to the task of screening homicide cases for possible inclusion in the criminal homicide study. The purpose of the initial screening is to exclude from the study cases which clearly did not involve the *mens rea* required for capital murder and/or whose facts clearly indicate a statutory aggravating circumstance was not present (Category 3). If the presentence report and sentencing order contain no evidence as to the presence of any one of these conditions, and there is no significant question about the death eligibility of a case, it is "clearly out."

A second objective is to identify as "clearly in" the study (Category 1) those cases in which it is clear that there was sufficient admissible evidence to support a capital murder conviction and finding that one or more statutory aggravating circumstances were present.

A third objective is to identify those cases in which, on the basis of the presentence report and judgment, it appears possible that, upon the development of a full file of discoverable information, there may be sufficient admissible evidence to provide a rational basis for a fact finder to convict the defendant of capital murder and find a statutory aggravating circumstance present. This would be best described as a "possible", or Category 2 classification. When a case meets this test, we will commence the development of additional information up to and including a full file of discoverable information. If, in the course of this data collection, it becomes clear that the case belongs in Category 1 or 3, we will recommend that classification.

Thus, at the conclusion of the screening process, each case will receive a final classification in to Category 1, 2, or 3, with the cases in Category 1 in the study and those in Category 3 excluded. Our third group of cases (Category 2) will be those in which, on the basis of the preliminary screen, there is some doubt whether the case belongs in Category 1 or 3. For these cases, we will obtain further information before making the determination of whether it belongs in Category 1, or 3.

When there is a question that facts bearing on any finding during the screening process might not be admissible in court, note that finding as questionable and note the reason in the thumbnail sketch. Maintain a list of all such cases as well as any other cases with problems of interpretation. These cases will be periodically reviewed with Mr. Young.

Another purpose of the initial screening is to develop a coding sheet for computer entry which will include the name of the defendant, the data and county of the offense, the defendant's study control number, the prosecutor's and defense attorney's names, and phone numbers, a brief statement of the facts, and codes for the original and final homicide charges. In addition, this file will indicate the screening decision and the coding for each of the case characteristics which underlies the initial screening decision.

This file will be periodically listed and distributed to interested parties to enable them (a) to

provide us with information needed to complete the initial screen and (b) challenge the accuracy of our initial screening determinations.

B. Sources of Information

The information required for the initial screening decision and for the completion of the screening questionnaire is usually obtainable from several sources:

The presentence investigation report ("PSI") is the primary source of information for the ISI screening. Often this document will clearly indicate a case is not death eligible (e.g., a death by unintentional motor vehicle homicide); however, when there is a significant question, the case will remain in the questionable category. Also, the presentencing report may or may not include the following relevant documents:

- a) The police report, which may include witness statements,
- b) The autopsy report,
- c) The judgment of conviction.

Each of these documents may be in the file or described in it even if not included in the presentence investigation report.

Be sure to indicate on the questionnaire the sources of information that you consulted in coding the questionnaire. If "other source" is checked, indicate the source by name, using no more than 13 letters including spaces. If these documents are still insufficient to support a classification into categories 1 or 3, either the full discovery package or more limited supplementation should be requested.

C. Completing the Questionnaire

The numbers in the left margin are question numbers; the numbers in the body of the questionnaire are variable numbers. The following are the preliminary coding instructions for each question. We will be developing additional protocols as the study moves forward.

- 1. Enter Control # from the master list.
- 2. Defendant's name - Be sure to enter the last name first, followed by a comma, and then the first name.
- 3. For date of offense, enter two digits for month, day, and year.
- 4. The county name and date of offense are self-explanatory.

5. This is the prosecutor who charged and tried the case. If they are different, put the prosecutor who tried the case if there was a trial. If there was not a trial, put the prosecutor who charged the case.
6. We want the current phone number if possible. Check the lawyer list first, and then the lawyer book. If you identify a prosecutor who is not on the lawyer list, put him or her on the list with the phone number.
- 7-8. We want the defense counsel that handled the case at the trial level, not the appeal. Check the lawyer list first, and then the lawyer book. If you identify a defense counsel who is not on the lawyer list, put him or her on the list with the phone number.
9. The original charge is from the information.
10. This is in the PSI.
11. For "basis" of conviction, enter whether it was by plea or the result of a trial.
12. Refer to the Sentencing Order. We have all of these in the brown binders. They are in order by date.
13. The sentence imposed should be entered for all cases.
14. See No. 13.
15. The required *mens rea* for capital murder can be shown if the defendant kills another person:
 - (1) purposely and with deliberate and premeditated malice;
 - (2) in the perpetration of or attempt to perpetrate any sexual assault in the first degree, arson, robbery, kidnapping, hijacking of any public or private means of transportation, or burglary, or
 - (3) by administering poison or causing the same to be done, or if by willful and corrupt perjury or subornation of the same, he purposely procures the conviction and execution of any innocent person.

Neb. Rev. Stat. § 28-303 (1997). "Premeditation" is "a design formed to do something before it is done." Neb. Rev. Stat. § 28-302 (1997). There is no specific length of time prior to the murder necessary to form the "design" to murder to qualify the crime as pre-meditated. The defendant need only have the amount of time necessary to develop an intention to murder before the homicide actually occurs.

Please understand that when coding the existence of *mens rea*, we are to code the *mens rea* as

being present only when there is a strong case strong case supporting a finding of the mens rea for first degree murder. That is, the factual basis for the mens rea of first degree murder must be clearly made out and there is no controlling issue that defeats the reliability of the evidence to support the mens rea. If the mens rea is subject to doubt, the coder should err on the side of treating the case as a "possible" or "Clearly Out" case, and the case should be flagged for further review.

The mens rea should be coded as Clearly Present when a factfinder has entered a judgment for first degree murder. Likewise, the mens rea should be coded as a 3 "Clearly Not Present" in cases where the factfinder was presented with a charge of First Degree Murder, and after a trial entered a judgment of less than First Degree Murder. In such cases, the factfinder has essentially acquitted the offender of the First Degree Murder charge, and therefore the mens rea is not "Clearly Present".

16. **Aggravating Circumstances.** Column A is the coding for the "procedural" history of the case, that is, what the prosecutor raised at the penalty trial, and what the court reviewing the aggravation actually found in the case.

Column B is the place where you are to code the strength of the evidence for a particular aggravator in the case. As with mens rea, the evidence for the existence of an aggravator must be very strong – even "overwhelming" – to support a finding of the aggravator. That is, the factual basis for the aggravator must be clearly made out and there must be no controlling issue that defeats the reliability of the evidence to support the aggravator. When aggravation is in doubt, the coder should err on the side of treating it as not present.

Before coding column B, you should thoroughly review the Aggravation History Memo that is provided in your coding materials. The memo contains all language treating a particular aggravator by the Nebraska Supreme Court. We have also bound all cases regarding the aggravators in separate notebooks for each aggravator so that you can review them as needed.

Because in some cases the definition of a particular aggravator has been narrowed or otherwise altered by the Nebraska Supreme Court, you must be aware of when the case you are reviewing occurred, and how that might implicate any particular aggravator in view of the history of its development. This is especially true with respect to aggravators 1(d), and 1(g), (h) and (i) which have changed in their application during the time of the study. We will be discussing the history of each of these in training.

Short descriptions of the statutory aggravating circumstances are as follows:

- A. **The Defendant was previously convicted of another murder or a crime involving the use or threat of violence to the person [Neb. Rev. Stat. § 29-2523(1)(a)].**

In General. Do not code the presence of this aggravator if the prior conviction is invalid. *United States v. Tucker*, 404 U.S. 443 (1972). Proof of a prior conviction for the purposes of this aggravator requires that the prior conviction be for a crime involving violence or the threat of violence to the

person. Crimes involving violence would include all first degree assaults and other assaults for which you have evidence that there is cognizable and significant violence. Do not code this factor as being present if the only assault is a third degree assault and/or there is no evidence of violence with respect to the assault in the record. *State v. Birdhead*, 225 Neb. 822, 408 N.W. 2d 309 (1987).

[The following are additional instructions provided in a memo to the coders of June 22, 2000, after discussions with prosecutors and defense counsel on the threshold for 1(a), which supported the following consensus].

To code the first prong of 1(a) as being present, the offender must have a conviction of a crime of at least the level of seriousness as the following:

Non-sexual Assaults: First Degree Assault

Second Degree Assault, but only if there is clear evidence of the use of a weapon

Sexual Assaults:

First Degree Sexual Assault (if forcible, i.e. statutory rape will not qualify unless there is evidence that the rape included use of force)

Second Degree Sexual Assault, but only if there is clear evidence of the use of a weapon

Robbery is codeable as a 1(a) crime; burglary is not a 1(a) crime.

Kidnapping is a 1(a) crime, but false imprisonment is not codeable as a 1(a) crime unless the record and facts are clear that the false imprisonment was a plea from an original charge of kidnapping.

There must be an actual conviction for the charge, and where there is an ambiguity on the record of whether there was an actual conviction, the presumption is to be that there is no conviction.

B. The Defendant had a substantial history of serious assaultive or terrorizing criminal activity [Neb. Rev. Stat. § 29-2523(1)(a)].

With respect to the "substantial history" portion of 1(a), history does not include any matters which occur either after the homicide involved in a case or those occur at approximately the same time as the homicide. *State v. Holtan*, 197 Neb. 544, 250 N.W. 2d 876 (1977). However, the Nebraska Supreme Court has held that a prior history is shown where a murder occurred five days prior to the murder for which the defendant is on trial. *State v. Moore*, 210 Neb. 457, 316 N.W. 2d 33 (1982). After that the court held that because the previous murder was sufficiently removed from the second murder it was separate incident and therefore satisfied the definition of "history". *Id.* See also, *State v. Joubert*, 224

Neb. 411, 399 N.W. 2d 237 (1986) (1a applies where prior murder occurred 75 days prior to the murder under consideration.)

[The following are additional instructions provided in a memo to the coders of June 22, 2000, after discussions with prosecutors and defense counsel on the threshold for 1(a), which supported the following consensus].

To code the second prong of 1(a) as being present, the offender must have two or more convictions for a crime of at least of a level of seriousness as that described below, or, if there is no conviction, we must have substantial evidence that the crime occurred, and a sufficient description of the nature of the crime to assess its level of seriousness. Crimes that qualify as "serious assaultive behavior" include crimes of at least of a level of seriousness as the following:

Non-sexual Assaults: First Degree Assault

Second Degree Assault, but only if there is clear evidence of the use of a weapon

Sexual Assaults:

First Degree Sexual Assault (if forcible, i.e. statutory rape will not qualify unless there is evidence that the rape included use of force)

Second Degree Sexual Assault, but only if there is clear evidence of the use of a weapon

Robbery is codeable as a 1(a) crime; burglary is not a 1(a) crime.

Kidnapping is a 1(a) crime, but false imprisonment is not codeable as a 1(a) crime unless the record and facts are clear that the false imprisonment was a plea from an original charge of kidnapping.

As discussed above, generally there must be two or more crime of the quality described above to code this prong of aggravator 1(a) as present. However, if the prior crime is murder, this aggravator is present even though there is only one prior crime. See State v. Moore (I).

Each time a coder codes 1(a) as being present, you should record in the thumbnail sketch the crime which provides the basis for the coding. Furthermore, you should highlight in the file the location of the information that was used as a basis for the code.

NOTE ON CODING ROBBERY AND JUVENILE CONVICTIONS: When coding a "robbery" crime, coders should distinguish between robberies on rap sheets of adults from those of children under the age of 18. For adults, all robbery convictions should be coded as meeting 1(a), except where there is affirmative evidence that the offender was charged only as an accomplice, and the offender's role in the robbery was minor and did not involve the use of violence.

We often have very limited information regarding the circumstances of juvenile robberies. Furthermore, courts are very reluctant to impose 1(a) liability upon an offender based upon juvenile convictions, unless such convictions are for highly aggravated crimes. Accordingly, where there is a juvenile robbery conviction on a person's record, coders should not code the aggravator 1(a) as present unless there is affirmative evidence in the file that the juvenile robbery involved the offender's own use of significant violence or a weapon in the robbery, and the juvenile was sentenced to 1 year or more in a juvenile or adult facility for the crime.

C. The murder was committed with an apparent effort to conceal the commission of a crime [Neb. Rev. Stat. § 29-2523(1)(b)].

This aggravator applies in those cases where the "only logical conclusion" for the purpose of the murder is to eliminate a witness. *State v. Reeves*, 234 Neb. 711, ___ N.W. 2d ___ (1990); *State v. Peery*, 199 Neb. 656, 261 N.W.2d 95 (1977), *cert. den'd*, 439 U.S. 882 (1978). A murder is also for the purpose of concealing a crime also only where the murder would prevent the discovery of a crime not otherwise likely to be discovered. *State v. Rust*, 197 Neb. 528, 250 N.W. 2d 867 (1977). Furthermore, this factor does not exist where the evidence is that the murder renders the victim incapable of identifying the perpetrator, but there is no evidence that was the purpose of the defendant engaging in the homicide. *State v. Hunt*, 220 Neb. 707, 371 N.W. 2d 708 (1985).

The clearest case that any case presence this aggravator is in a case in which a crime is being committed against one person and after the crime is completed, another person arrives at the scene of the crime to investigate what is happening, and the defendant kills the second person as well. See *State v. Reeves*, *Supra*. Another clear case in the Nebraska Supreme Court authority is the case in which a defendant admitted that he did not believe the victims claim that if the defendant let him go that he would not go to the police. *State v. Joubert*, *Supra*. This aggravator can be shown by where there is evidence to show that the murder was to prevent identification of the defendant or a co-perpetrator, even if there was not enough evidence to prove that the motive was to conceal the commission of the crime itself. *State v. Rust*, 197 Neb. 528, 250 N.W. 2d 867 (1977).

This aggravator would not apply where the evidence indicates that the defendants initial purpose in the killing was other than concealing the crime. For example, in *State v. Hunt*, 220 Neb. 707, 371 N.W. 2d 708 (1985), the Nebraska Supreme Court held that because the jury had apparently concluded that the defendant went to the victim's home with the intention of killing her so that he could fulfill a sexual fantasy of having sex with a corpse, 1(b) did not apply. Similarly, where there is another overriding motive for killing the victim, such as revenge or in a contract killing, 1(b) would presumably not apply.

D. The murder was committed with an apparent effort to conceal the identity of the perpetrator of a crime [Neb. Rev. Stat. § 29-2523(1)(b)].

See discussion of aggravator directly above.

E. The murder was committed for hire, or for pecuniary gain [Neb. Rev. Stat. § 29-

2523(1)(c)].

Code this aggravator as applicable if the murder itself is primarily committed to obtain a pecuniary gain in a strict sense. For example, 1(c) applies to somebody who is hired to commit murder or hires someone else to commit a murder, or if someone commits a murder to recover insurance proceeds, or if someone who commits a murder who is a beneficiary of the victim's will. However, the aggravator does not apply unless the murder itself was intended to attain the monetary gain itself. Accordingly, a murder that is committed in the course of a robbery is ordinarily not the type of murder that is subject to a 1(c) aggravator. Moreover, where the murder appears to have been committed to conceal a crime or the identity of the perpetrator, 1(c) will not ordinarily apply, even though the defendant obtained some monetary gain during the crime. *State v. Stuart*, 197 Neb. 497, 250 N.W. 2d 849 (1977); *State v. Rust*, 197 Neb. 528, 250 N.W. 2d 867 (1977).

F. The Defendant hired another to commit the murder for the Defendant [Neb. Rev. Stat. § 29-2523(1)(c)].

See discussion of 1(c) directly above.

G. The murder was especially heinous, atrocious, cruel, or manifested exceptional depravity by ordinary standards of morality and intelligence [Neb. Rev. Stat. § 29-2523(1)(d)].

The framework that should be applied when coding the existence of 1(d) follows. Thumbnail sketches should distinguish between the two prongs of 1(d) whenever possible, and should identify the category below that applies to the crime. As always, where the presence of an aggravator is very close, deference should be given to the coding that is most consistent with the charging behavior, or with the sentencing court's sentence on the aggravator. If there was no penalty trial, the resolution of close questions should be resolved against finding the aggravator present.

This aggravator should be coded as present where there is an "overwhelming" basis in the evidence for finding one of the two following prongs exists:

A. Especially Heinous, Atrocious and Cruel.

- (1) Rape with sexual abuse aggravation beyond only physical control and penetration, or
- (2) Rape with status of the victim (age, very young, or elderly) White, and Carter, or
- (3) Where there is "torture, sadism, imposition of extreme suffering. . ." or
- (4) Defendant's method of killing indicates that defendant had intent to cause serious mental, emotional, or physical pain.

- E.g. -use of multiple weapons in extended assault
-use of substantially gratuitous violence (substantially more than necessary to cause death) or over extended period of time

B. Exceptional Depravity

(1) Coldly Calculated

Marked by substantial evidence of one of the following:

- A. Intentional selection of victims on the basis of an identity characteristic (e.g. sexual orientation, gender, race, age); or,
- B. Experimentation with the method of killing prior to the murder, or
- C. Extended or non-trivial preparation for murder involving a non-trivial amount of time and effort (e.g. determining intent to kill, and then travelling to another site to obtain weapons and returning, hatching a complicated plan to murder)

and/or

(2) "Senselessly bereft of the value or dignity of human life. . . "

Meets one of the five State v. Palmer (1986) factors:

- A. evidence that defendant relished the murder or the death of the victim;
- B. gratuitous violence (substantially more violence engaged than necessary to cause death);
- C. needless mutilation of the victim (before or after death);
- D. helplessness of the victim, and the victim is murdered while wholly unable to resist. (e.g. bound; completely physically restrained by defendant or coperpetrators; young child under the full physical control of the defendant), or,
- E. senselessness of the crime.

H. At the time the murder was committed, the Defendant also committed another murder

[Neb. Rev. Stat. § 29-2523(1)(e)].

This aggravator is straightforward; it requires that the defendant have killed a second victim at or about the same time as the defendant has killed the first victim. *State v. Reeves, supra*; *State v. Simants*, 197Neb. 549, 250 N.W.2d 881 (1997). However, 1(e) is not shown where the defendant has merely attempted to kill a second victim, but does not actually do so. *State v. Stewart, supra*.

I. The Defendant knowingly created a great risk of death to at least several persons [Neb. Rev. Stat. § 29-2523(1)(f)].

This aggravator applies to the unique situation "where the act of the defendant jeopardizes the lives of more than two other persons, such as the use of bombs or explosive devices, indiscriminate shooting into groups, or a number individuals, or other like situations". *State v. Stewart*, 197 Neb. 479, 250 N.W. 2d 849, 865 (1977). However, this aggravator is not present where the defendant independently killed multiple persons at or about the same time as each other. Moreover, it will not apply where the defendant has attempted to murder only a second victim. *State v. Stewart, supra*.

Aggravator 1(f) Where defendant shot "at least three police officers, wounding two of them" the aggravator is clearly shown. *State v. Rust*, 197 Neb. 528, 250 N.W. 2d 867, 874(1974). Where defendant fired on three victims at close range actually killing one and wounding another was sufficient to show aggravator 1(f). *State v. Holtan*, 197 Neb. 544, 250N.W. 2d 876, 880(1977). This aggravator does not apply simply because the defendant kills more than one or two persons. The focal point is on the act of the defendant and the risk presented by the act itself, *State v. Simants*, 197 Neb. 549, 250 N.W. 2d 881, 891(1977). The mere presents of others in a house at the time the defendant killed a person in the house does not satisfy 1(f). *State v. Reeves*, 239 Neb. 419, 476 N.W.2d 829, 839 (1991).

J. The victim was a law enforcement officer or a public servant having the custody of the Defendant or another [Neb. Rev. Stat. § 29-2523(1)(g)].

It is important to understand that this aggravator does not apply simply because the victim is a law enforcement officer. Rather, the Nebraska Supreme Court has clearly stated that 1(g) only applies when the law enforcement officer has a defendant, or another defendant in custody at the time of the murder. *State v. Reynolds*, 235 Neb. 662, _____ N.W. 2d _____ (1990).

K. The Defendant committed the crime to disrupt or hinder the lawful exercise of any governmental function or the enforcement of the laws [Neb. Rev. Stat. § 29-2523(1)(h)] (CHECK against 1(i) for crimes committed after July 15, 1998).

This is the aggravator that applies if the police officer is killed in the line of duty by a defendant, when the police officer does not have custody of the defendant at the time of the murder (only applies to homicides of law enforcement officers committed before July 15, 1998; continues to apply homicides of persons who are not law enforcement officers beyond July 15, 1998.) *State v. Reynolds, supra*. The Nebraska Supreme Court has also held that this factor applies when the victim is a private citizen, where the victim was engaged in an attempt to assist police officers in apprehending a defendant at the

time the victim was killed. *State v. Rust, supra*. However, this factor does not apply when a witness to crime is killed, simply because that witness might take part in the subsequent enforcement of the law against that defendant. *State v. Rust, supra*. Instead, in order for the murder of a lay person to provoke this aggravator, the lay person had to have been involved in a lawful exercise of a governmental function or enforcement of the laws and the defendant's murder was an attempt to hinder that action. *Id.*

- L. Victim was a law enforcement officer engaged in the lawful performance of his or her official duties as a law enforcement officer and the offender knew or reasonably should have known that the victim was a law enforcement officer. (ONLY for homicides committed AFTER JULY 15, 1998) [Neb. Rev. Stat. § 29-2523(1)(i)].

This is the aggravator that applies if the police officer is killed in the line of duty by a defendant, when the police officer does not have custody of the defendant at the time of the murder (For homicides committed on or after July 15, 1998). Code only if the offender knew or should have known that the victim was a police officer.

17. Descriptions for coding Mitigating Circumstances are as follows:

- A. The Defendant has no significant history of prior criminal activity [Neb. Rev. Stat. § 29-2523(2)(a)].

The Nebraska Supreme Court has held that "significant history" does not refer to a "slight or inconsequential history of criminal activity" but rather to "an important, notable, or meaningful history." *Holtan*, 197 Neb. at 548. The mere existence of a prior criminal record does not negate the existence of this mitigator. *State v. Simants, supra*. For example, in *Simants*, the Nebraska Supreme Court found that the defendant's prior criminal history, consisting of several misdemeanor convictions, and a statutory rape which was not charged or prosecuted, did not constitute a significant history of prior criminal history.

Prior criminal history that would disqualify a defendant for this mitigator would include both adjudicated and unadjudicated criminal activity. *State v. Reeves*, 234 Neb. at 721. The law does not appear to require the State to prove the absence of the mitigator beyond a reasonable doubt in order for the mitigator to not apply. *Reeves, supra*. Moreover, prior uncounselled convictions are permitted to be considered by the court when judging whether this mitigator applies to a defendant. *Reeves, supra*.

This mitigator only concerns criminal history that was prior to the homicide. Crimes committed after the homicide do not count against a defendant on this mitigator. *State v. Moore, supra* at 471.

The law is unclear as to whether and what type of juvenile offenses can be considered for the purposes of this mitigator. The protocol is that any offense that would be subject to consideration for an adult under aggravator 1(a) would also be subject to consideration with respect to a juvenile with

respect to this mitigator. Please refer to the coding instructions on aggravator 1(a).

- B. The Defendant acted under unusual pressures or influences or under the domination of another person [Neb. Rev. Stat. § 29-2523(2)(b)].

This mitigator is limited to "external pressures, not those a defendant chooses to create for himself." *State v. Peery*, 199 Neb. at 676.

- C. The Defendant committed the crime while the Defendant was under the influence of extreme mental or emotional disturbance [Neb. Rev. Stat. § 29-2523(2)(c)].

This is not the mitigator that applies to someone who is under the influence of drugs or alcohol at the time of the murder. Rather, that should be indicated as a 2(d) mitigator. This mitigator applies when the defendant shows that he suffered from a mental or emotional disturbance, either generally speaking, or that one was caused by the circumstances just prior, or in which the crime occurred. *State v. Rust, supra*. The term "extreme" does not appear to be a strong limitation on the applicability of this mitigator. See *Rust, supra*.

- D. The age of the defendant at the time of the crime [Neb. Rev. Stat. § 29-2523(2)(d)].

Youth and old age can both be considered here. A 17-year old is entitled to this mitigator. *State v. Stewart, supra*, while a 24-year old is not. *State v. Reeves, supra*. In penalty trial cases, you should code this mitigator as a 1 for defendants of age 18 and younger, 2 for defendants of 19, 3 for defendants of age 20, and 4 for defendants of 21. For defendants of age 70 or more, code this mitigator as present.

After an as of yet undetermined date in 1982, no person can receive the death penalty if they were 18 or younger at the time of the homicide. Neb. Rev. Stat. § 28-105.01 (1997). Review the memo on this basis for exclusion, which will identify the effective date of this legislation. If you have a case where the defendant was 18 or younger at the time of the homicide, please flag that case and bring it to the attention of Mr. Young.

- E. The offender was an accomplice in the crime committed by another person and his participation was relatively minor [Neb. Rev. Stat. § 29-2523(2)(e)].

The death penalty is rarely sought against a person whose actual role as an accomplice in the murder was very minor. Accordingly, this mitigator is unlikely to be an issue. However, it should be coded if present.

- F. The victim was a participant in the Defendant's conduct or consented to the act [Neb. Rev. Stat. § 29-2523(2)(f)].

There is no law interpreting this mitigator. You should code this as being present in "mercy killing" cases, where there is evidence presented that the Victim directed or asked the defendant to kill them as a matter of mercy. Other instances would include where the defendant and victim were

voluntarily playing games of chance together that presented risks to each other's lives. Note each of these codings on your coder's note sheets.

- G. At the time of the crime, the capacity of the Defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was impaired as a result of mental illness, mental defect or intoxication [Neb. Rev. Stat. § 29-2523(2)(g)].

Generally, a minimal level of impairment is all that is required for this mitigator to be present. *State v. Williams*, 205 Neb. 56, 287 N.W.2d 18 (1979)(anti-social personality and slight alcohol intoxication "in some manner diminished the defendant's capacity to conform his conduct to the [law]."

If the impairment is non-alcohol or drug abuse related, the defendant will usually put on expert testimony with respect to a mental illness. If there is no expert testimony, the lay evidence of impairment should be significant before coding this mitigator as present.

18. You should code question 18, "Status in project," to reflect your conclusions as to the status of the case. Code this variable "4" if there is no information in the file or if the presentence report gives you no sense of what the case involved, e.g., only the offender's self-serving account. Also, make an entry for each of the remaining variables concerning the *mens rea* and statutory aggravating circumstances.

19. Otherwise excluded. If a case fits within one of these two categories, it is not "death eligible" as a matter of statutory law. Most cases will be coded 9.

20. Defendant's sex. Self-explanatory. This is in the PSI. For cases in the DCI study, we will address this with more subtlety, but for the PCI, just indicate the actual biological gender of the Defendant at the time of the crime.

21. Defendant's Race. This will also be in the PSI.

22. Is Defendant Hispanic? This will probably be in the PSI. Be aware that one can be hispanic and be caucasian or African American.

23. Defendant's religious preference. This will ordinarily be in the PSI.

24. Economic status of Defendant. PSI.

25. Defendant's employment history. PSI.

26. Defendant's Education. PSI.

27. Victim's Gender. Self-explanatory. This is in the PSI. For cases in the DCI study, we will address this with more subtlety, but for the PCI, just indicate the actual biological gender of the Defendant at the time of the crime.

28. Victim's Race. Victim Death certificate will have this. This may be in the PSI. Also, autopsy reports will sometimes contain this.
29. Is Victim Hispanic? This will often be on the Victim's death certificate, and may be in the PSI. Be aware that one can be Hispanic and be Caucasian or African American.
30. Victim's religious preference. This will be difficult to know. Do not spend much effort on this if it is not on the Victim's Death Certificate.
31. Economic status of Victim. This may be difficult to identify. Do not spend much effort on this if it is not on the Victim's Death Certificate.
32. Victim's Employment History. Ordinarily this will be difficult to identify unless the crime itself occurred at the Victim's workplace.
33. Victim's Education. Ordinarily this will be difficult to identify.
- 34-41. Sources consulted.

Indicate which sources you consulted in conducting your screen. Items in addition to the presentence report, such as the indictment and police report, should be checked whether they are included in the presentence report or are a separate part of the entire file. Coder signature and date. Sign your name and print it below with date code (two digits for month, day and year).

Brief statement of facts.

Provide here a thumbnail sketch of the case which indicates the statutory aggravating circumstances you think do or may apply in questionable cases. Include information on defendant/victim relationship, motive, mode of killing, presence of drugs, level of violence, defendant priors, defenses invoked. The following would be an example: V Police (___), relationship, 8 people held hostage (___), 1 violent prior. If others in addition to the defendant participated in the violence or if the defendant hired the killer, so indicate. For priors, itemize by name: homicides (by type), robbery, rape, arson, burglary, and kidnapping. For other priors, simply indicate whether they were violent or nonviolent. Also flag possible mens rea or conduct issues, e.g., unclear if defendant intended to kill or only to cause physical suffering. Limit your summary to 300 characters including blank spaces between words. Anything in excess of this limit cannot be entered into the computer file for the case.

Technical Appendix B

**Data Collection Instrument (D.C.I.)
with Mitigation Code Appendix
and Protocol for Coding**

TABLE OF CONTENTS

I. IDENTIFYING AND PROCEDURAL INFORMATION	3
II. DEFENDANT'S BACKGROUND—PERSONAL AND CRIMINAL	11
A. BIOGRAPHICAL, EDUCATIONAL, VOCATIONAL	11
B. OFFENDER'S CRIMINAL RECORD	16
C. MENTAL HEALTH, DRUG AND ALCOHOL	19
III. VICTIM'S BACKGROUND	24
IV. CHARACTERISTICS OF THE HOMICIDE	28
A. SCENE OF THE CRIME	28
B. METHOD OF KILLING	30
C. NON-STATUTORY AGGRAVATING CIRCUMSTANCES OF THE VICTIM	31
D. NON-STATUTORY AGGRAVATING FEATURES OF THE OFFENSE	32
E. NON-STATUTORY AGGRAVATING FEATURES OF THE OFFENSE SPECIFICALLY ATTRIBUTABLE TO THE DEFENDANT	38
V. PEOPLE KILLED, INJURED, OR PUT AT GRAVE RISK OF DEATH	39
VI. DEFENDANT'S MOTIVES	41
VII. ROLE OF CO-PERPETRATOR	43
VIII. DEFENSE TO CHARGES	46
IX. STRENGTH OF EVIDENCE	48
X. STATUTORY AGGRAVATING CIRCUMSTANCES	50
XI. MITIGATING CIRCUMSTANCES	52
A. MITIGATING CIRCUMSTANCES - STATUTORY	52
B. PROCEDURAL AND SUBSTANTIVE DETAIL ON MITIGATION	53
XII. ARNOLD BARNETT'S THREE-DIMENSIONAL MEASURE OF CASE CULPABILITY	54
XIII. SALIENT FACTORS TYPOLOGY	56
MEASURE #1	56
MEASURE #2	59

NEBRASKA CRIMINAL HOMICIDE REVIEW STUDY
DATA COLLECTION INSTRUMENT

KEATING, O'GARA, DAVIS & NEDVED, P.C.

DEFENDANT'S NAME: _____
Last

First

MI _____

PROJECT NUMBER: _____

PRE-CODER: _____
Last

CODER: _____
Last

SUPPLEMENTAL CODER: _____
Last

REVIEWED BY: _____

APPROVED FOR DATA ENTRY: _____
NAME & DATE

**NEBRASKA CRIMINAL HOMICIDE REVIEW PROJECT
DATA COLLECTION INSTRUMENT**

Coder: _____
Last

Project Number: X1 _____

List data sources relied upon:

- | | |
|---|--|
| 01 = Trial court opinion | 12 = Guilt Phase or guilty plea testimony/B.O.E. |
| 02 = Appellate court opinions | 13 = Sentencing Hearing testimony |
| 03 = Presentence Investigation Report | 14 = County adult criminal records |
| 04 = Mental health evaluation/reports | 15 = County juvenile records |
| 05 = Docket entries | 16 = Death certificate |
| 06 = Police reports | 17 = Autopsy/medical examiner's report |
| 07 = Information | 18 = Attorney Interview |
| 08 = Prior Criminal History | 19 = Defendant/State briefs |
| 09 = Sentencing Order | 20 = Uniform Homicide Report |
| 10 = County Attorney report to State Court
Administrator | 21 = Dept. of Corrections Classification Study |
| 11 = County Attorney/Defense
Counsel Questionnaire | 22 = Affidavit for Probable Cause for Arrest Warrant |
| | 23 = Trial Court File |

Data sources: Part I _____

I. IDENTIFYING AND PROCEDURAL INFORMATION

1. Name of defendant:

X3 _____
Last

X4 _____ X5 _____
First MI

2. County of conviction (name and county code from codebook) :

NAME X11

X12 _____
CODE

3. Date of offense (e.g., 01/08/92)
(enter 01/01/YY if only year of offense is known)

X8 _____
MM DD YY

4. Date of Guilt Trial Conviction

X9 _____
MM DD YY

Code the date of guilt trial conviction. If date and month are unknown, code to the extent known. If year is unknown, code it 9999.

5. Date of Start of Penalty Trial ____/____/____ - ____/____/____ - ____/____/____/____
X10

Code year and month. If date and month are unknown, code to extent known. If year unknown, code 9999. If there was no penalty trial, code year 8888.

6. Date Sentence Imposed ____/____/____ - ____/____/____ - ____/____/____/____
X10A

In penalty trial cases, date of life/death judgment entered. If date and month are unknown, code to extent known. If year unknown, code 9999.

7. Trial judge's name and code: _____ VN10 ____|____|____
Last
999 = Unknown

8. Sentencing judge(s) names & codes: _____ VN11 ____|____|____
(See judges code list) _____ VN12 ____|____|____
_____ VN13 ____|____|____

9. Prosecuting attorney's name: _____ X13
Last

Prosecutor's Code VN14 ____|____|____

10. Prosecutor's Ph. #: _____ X13A
____/____/____/-____/____/____/-____/____/____/____

(See Prosecutor List) If unknown, code last entry with a zero

11. Defense counsel's name: _____ X14 _____ X15
Last First

____|____|____ V15
CODE

999 = Unknown

12. Defense Counsel's Ph. #: _____ X16
____/____/____/-____/____/____/-____/____/____/____

(See Defense Attorney List) If unknown, code last entry zero

13. Status of defense counsel: VR16 _____
- | | |
|--|--|
| 1 = Retained | 5 = <i>Pro bono</i> |
| 2 = Appointed - private | 6 = <i>Pro se</i> (no back-up counsel) |
| 3 = Public Defender | 7 = <i>Pro se</i> (with back-up counsel) |
| 4 = Appointed - Nebraska Commission
on Public Advocacy Attorney | 8 = Other _____ |
| | 9 = Unknown |

14. Original Homicide Charge: X17 _____

15. Charge of Conviction X18 _____

Codes for Questions 14 and 15

- | | |
|-----------------------------------|-----------------|
| 1 = First Degree Murder | 5 = Other _____ |
| 2 = 2 nd Degree Murder | 9 = unknown |
| 3 = Manslaughter | |
| 4 = Homicidal Child Abuse | |

16. Was the Charge reduced at anytime by the Prosecutor prior to trial? VN14A _____

- | | |
|-----|--|
| 1 = | Prosecutor reduced charge from First Degree Murder to Second Degree Murder |
| 2 = | Prosecutor reduced charge from First Degree Murder to Manslaughter |
| 3 = | Prosecutor reduced charge from Second Degree Murder to Manslaughter |
| 4 = | Prosecutor reduced charge from Manslaughter to other offense (specify) _____ |
| 5 = | Other charge reduction |
| 6 = | Prosecutor did not reduce charge |
| 9 = | unknown |

17. Reason for reduction in charge: VN14C _____

- | | |
|-----|---|
| 1 = | Prosecutor reduced charge in exchange for a plea of guilt |
| 2 = | Prosecutor reduced charge in exchange for testimony against other defendant |
| 3 = | Prosecutor unilaterally reduced charge (without any agreement from defendant) |
| 5 = | Other: _____ |
| 8 = | Prosecutor did not reduce charge |
| 9 = | Reason unknown |

18. Basis for Conviction: _____
X19

- | | |
|-----|---|
| 1 = | Plea |
| 2 = | Jury trial verdict |
| 3 = | Bench trial judgment |
| 4 = | Trial, but unknown if tried to bench or to jury |
| 9 = | Basis for conviction unknown |

19. Mens Rea for First Degree Murder : X32
 (See ISI Protocol for Definition of Mens Rea for First Degree Murder)
- 1 = Yes (clearly present)
 2 = questionable
 3 = No (clearly not present)
 9 = unknown
20. Sentence X33
- 1 = Death
 2 = Life
 3 = Term of Years
 4 = other
 5 = No conviction
 9 = unknown
21. If the sentence was a term of years, what was the minimum and maximum term?
- Minimum / / / to Maximum / / / (If Maximum = Life, code last block in X35 as L)
X34X35
22. Was there a penalty trial? X20
- 0 = No
 1 = Yes, prosecution presented at least one aggravating circumstance and/or urged the court to impose the death penalty based upon evidence presented at the guilt trial
 2 = Yes, prosecution did not present aggravation, but sentencing court exercised its own discretion and considered whether aggravation was present and whether death sentence should be imposed
 8 = Not applicable because no first degree murder conviction
 9 = Unknown if there was a penalty trial
23. If there was a penalty trial, statutory aggravators found: X21
- 1 = 1 or more aggravating factors presented by prosecution and found
 2 = 1 or more aggravating factors presented but none found
 3 = Other, specify _____
 7 = No penalty trial
 8 = Unknown if there was a penalty trial
 9 = Penalty trial, but findings unknown
- 23A. Did Prosecutor seek a death sentence? X21A
- 0 = No
 1 = Yes
 8 = Not applicable, because no first degree murder conviction
 9 = Unknown
24. If verdict was sentence of death, was the finding based on: V19
- 1 = At least one aggravating circumstance and no mitigating circumstance
 2 = One or more aggravating circumstances which outweigh any mitigating circumstances
 8 = No death sentence
 9 = Basis of death sentence unknown

25. If the judge or three judge panel reached a verdict of life following a penalty hearing, the finding was based on: V20A _____
- 1 = No aggravating circumstances found.
 - 2 = Aggravating circumstances did not outweigh mitigating circumstances and it is known which aggravating circumstances were found and which mitigating circumstances were found or considered.
 - 3 = Aggravating circumstances did not outweigh mitigating circumstances and it is known which aggravating circumstances were found but unknown which mitigating circumstances were found or considered.
 - 4 = Aggravating circumstances did not outweigh mitigating circumstances and it is unknown which aggravating circumstances were found and which mitigating circumstances were found or considered.
 - 8 = Not applicable, because no penalty trial.
 - 9 = Basis of life verdict unknown.

26. If verdict was a sentence of death and no mitigating circumstances were found: V20B _____
- 1 = The factfinder considered and rejected proffered statutory mitigating evidence.
 - 2 = The defendant insisted that no mitigating evidence be presented but defense counsel nevertheless urged that mitigating circumstances be found based on the guilt trial record.
 - 3 = The defendant insisted that no mitigating evidence be presented and no argument was made for the existence of mitigating factors.
 - 8 = Not applicable because there was no penalty trial.
 - 9 = Unknown why no mitigating circumstances found.

Code this variable with an X if the court imposed a life sentence or found that the mitigation in the case outweighed the aggravation in the case.

27. Did the defendant ask the sentencing authority to return a verdict of death? V20C _____
- 1 = Yes
 - 0 = No
 - 8 = Not applicable because there was no penalty trial
 - 9 = Unknown

28. Prior homicide convictions. Has Defendant been convicted for a prior homicide? X22 _____
- 0 = No prior homicide convictions
 - 1-8 = Number of convictions for prior homicides
 - 9 = Unknown if defendant had a prior homicide conviction.

A. List case numbers for prior homicide convictions (starting with earliest known)

____/____/____/____/____
X23

____/____/____/____/____
X24

If the Master List Case Numbers (X1 on each ISI) for known prior homicide convictions are unknown, code a 9 in the last entry block applicable. If there were more than two prior homicides, list numbers on attached note sheets.

29. Prior guilt conviction(s) for this homicide as a result of trials or pleas: X25 _____
- 0 = Not applicable because there was no prior conviction
 2-7 = Sequence number if this is a subsequent conviction
 9 = Unknown if a prior conviction
30. If there was a prior conviction for this homicide, indicate the Master Case List number for the first conviction (See Master Case List for the numbers) X26 ____/____/____/____/____
- 0 = Not applicable because there was no prior conviction
 8 = Prior conviction, but the case number of the first conviction is unknown
 9 = Unknown if there was a prior conviction
31. Prior Penalty trial(s) for this 1st degree murder conviction X27 _____
- 0 = not applicable because there was no 1st degree Murder conviction
 1 = First penalty trial for this homicide
 2-7 = Sequence number if this is a subsequent penalty trial
 9 = 1st degree murder conviction, but unknown whether there was a prior penalty trial
32. If there was a prior penalty trial(s) for this homicide, enter the Master List Case case numbers (X1) for them. (See Master List)
- ____/____/____/____/____
 X28
- ____/____/____/____/____
 X29
- ____/____/____/____/____
 X30
- ____/____/____/____/____
 X31
- If the Master List Case Numbers (X1 on each ISI) for known prior/subsequent penalty trial(s) is unknown, code a 9 in the last entry block applicable. If there were more than two prior homicides, list numbers on attached note sheets. If there was no prior penalty trial, code 8 in last position of X28.

33. Current offense data (convictions only):

A- Homicide

- 01 = Murder (1st Degree) § 28-303
 02 = Murder (2nd Degree) § 28-304
 03 = Manslaughter § 28-305
 04 = Other (specify) _____

B- Contemporaneous offense code (Rows B-E):

- | | |
|---|--|
| 05 = Kidnapping § 28-313(2) | 16 = Firearm used in commission of a felony § 28-1205(2)(b) |
| 06 = Kidnapping w/safe release § 28-313(3) | 17 = Felon/fugitive possessing a firearm §28-1206(3)(b) |
| 07 = Sexual assault (1 st Degree) § 28-319 | 18 = Delivery controlled substance/Poss. with intent to deliver § 28-416 |
| 08 = Sexual assault (2 nd Degree) § 28-320 | 19 = Other violent felonies (see Neb. Crimes codebook) |
| 09 = Sexual abuse of an inmate § 28-322.02 | 20 = Other non-violent felonies (see Neb. Crimes codebook) |
| 10 = Arson (1 st Degree) § 28-502 | 21 = Violent misdemeanors (see Neb. Crimes codebook) |
| 11 = Arson (2 nd Degree) § 28-503 | 22 = Other non-violent misdemeanors (see Neb. Crimes codebook) |
| 12 = Burglary § 28-507 | |
| 13 = Robbery § 28-324 | |
| 14 = Assault (1 st Degree) § 28-308 | |
| 15 = Assault (2 nd Degree) § 28-309 | |

If there are more than four contemporaneous offenses, code the four most serious. "Counts" means number of victims in homicide cases and separate charges in other crimes.

	Offense Convicted	Number Counts Convicted
A. Most serious homicide	_____ _____ VR21	_____ _____ VR22
B.Contemp. Offense #1	_____ _____ VR23	_____ _____ VR24
C. Contemp. Offense #2	_____ _____ VR25	_____ _____ VR26
D. Contemp. Offense #3	_____ _____ VR27	_____ _____ VR28
E. Contemp. Offense #4	_____ _____ VR29	_____ _____ VR30

34. If there was no penalty trial, was it because:

VR34 ____|____

A. Guilty pleas

- 1 = The conviction was the result of a plea bargain to Murder 1 under which the prosecution agreed not to present evidence of any aggravating circumstances
- 2 = Prosecution charged Murder 1, but agreed to a plea of less than Murder 1.
- 3 = Prosecution charged less than Murder 1 and Defendant plead guilty
- 4 = Other _____
- 9 = Unknown

B. Trials

- 10 = Prosecution and Defendant agreed to not proceed with presenting aggravating and mitigating circumstances, and sentencing authority agreed
- 11 = Prosecution waived or refrained unilaterally from presenting evidence of any aggravating circumstances
- 12 = Prosecution agreed to refrain from presenting evidence of any aggravating circumstances if defendant agreed to waive jury for guilt trial
- 13 = Other _____
- 88 = Not applicable since penalty trial held
- 99 = Unknown why no penalty hearing conducted

35. If a penalty trial was conducted, sentence was determined by?

VR35 ____

- 1 = Single judge
- 2 = Three judge panel
- 8 = Not applicable because no penalty hearing
- 9 = Unknown

36. Was there an appeal?

V36 ____

- | | |
|--|--|
| 1 = Conviction and sentence affirmed | 4 = Conviction reversed and sentence vacated |
| 2 = Conviction affirmed, sentence vacated or reduced for legal error | 5 = Appeal pending |
| 3 = Conviction affirmed, death sentence vacated as excessive | 6 = Yes, but outcome of appeal unknown |
| | 7 = No appeal |
| | 9 = Unknown if an appeal |

If appealed, enter appeal docket
number (first appeal)
(e.g., 99-0193)

V37 ____|____ - ____|____|____|____

Enter Nebraska reporter citation
(e.g. 232 Neb. 123)

XN37A ____|____|____ Neb. ____|____|____

Enter West reporter citation
(e.g., 464 N.W.2d 110)

V38 ____|____|____ N.W.2d ____|____|____|____

(Leave blank if not applicable or unknown for docket number and citation variables)

II. DEFENDANT'S BACKGROUND—PERSONAL AND CRIMINAL

A. BIOGRAPHICAL, EDUCATIONAL, VOCATIONAL

37. Defendant's date of birth (e.g., 01/08/99).
(enter 01/01/YY if only year of birth known)
- X7
MM DD YY
38. Defendant's sex: X82
- 1 = Male
0 = Female
9 = unknown
39. Defendant's Sexual Orientation and Behavior (Code all that apply)
- 1 = heterosexual VN629
2 = homosexual
3 = bisexual VN630
4 = non-sexual
5 = trans-sexual VN631
6 = transvestite
7 = Other: VN632
9 = unknown
40. Defendant's race: X83
- 1 = White
2 = African American
3 = Asian
- 4 = Native American
5 = Biracial or multiracial, but not African-American
6 = Other (specify)
9 = Unknown
41. Is Defendant Hispanic? X84
- 1 = Yes
2 = No
3 = Has Spanish surname, but unknown if Hispanic
4 = unknown
42. Defendant's Religious Preference (if available): X85
- 1 = Roman Catholic
2 = Lutheran
3 = Presbyterian
4 = Methodist
5 = Baptist
6 = Christian (generally stated)
7 = Jewish
8 = Mormon (LDS)
9 = Odinist/Asatru
10 = Native American Religion
- 11 = Islamic/Muslim
12 = Buddhist
13 = Atheist
14 = Agnostic
15 = Other
- 98 = Has a religious preference, but identity of preference is unknown
99 = Unknown if Defendant has a religious preference

43. Defendant's birth place: VR43 ____|____
- | | |
|---------------------------------------|---|
| 01 = Nebraska | 08 = African nation |
| 02 = Other state in the United States | 09 = Latin American or Caribbean nation |
| 03 = Native American Reservation | 10 = Europe |
| 04 = Puerto Rico | 11 = Vietnam |
| 05 = Cuba | 12 = Asian nation (other than Vietnam) |
| 06 = Mexico | 13 = Middle East |
| 07 = Canada | 14 = Other (specify) _____ |
| | 99 = Unknown |
44. Was defendant a Nebraska resident at the time of the offense? V44 ____
- 1 = Yes 0 = No 9 = Unknown
45. If defendant was a Nebraska resident, in what county did the defendant reside?
(Enter name and county code from codebook) (88 = Not applicable; 99 = Unknown)
- _____ VR45 ____|____
46. Defendant's language VN46 ____|____
- | |
|--|
| 01 = Defendant speaks fluent English |
| 02 = Defendant speaks a substantial amount of English but not fluently |
| 03 = Defendant speaks some, but little English |
| 04 = Defendant does not speak English |
| 05 = Defendant is mute |
| 09 = unknown |
47. If defendant was not a Nebraska resident, where did the defendant live at the time of the offense? V47 ____|____
- | | |
|---------------------------------------|---|
| 02 = Other state in the United States | 08 = African nation |
| 03 = Native American Reservation | 09 = Latin American or Caribbean nation |
| 04 = Puerto Rico | 10 = Europe |
| 05 = Cuba | 11 = Vietnam |
| 06 = Mexico | 12 = Asian nation (other than Vietnam) |
| 07 = Canada | 13 = Middle East |
| | 14 = Other (specify) _____ |
| | 88 = N/A, Defendant was a Nebraska resident |
| | 99 = Unknown |
48. Defendant's living arrangements prior to apprehension: V48 ____|____
- | | |
|---|--|
| 01 = Living alone | 06 = Inmate of institution |
| 02 = Living with friends, acquaintances, roommates | 07 = Living with one or more of same sex |
| 03 = Living with spouse or paramour (w i t h children) | 08 = Living with parents or close family |
| 04 = Living with spouse or paramour (n o children) | 09 = Homeless |
| 05 = Traveling on the road/hitchhiking (temporary) | 10 = Other _____ |
| | 99 = Unknown |

49. Does the defendant have children he/she supported
or saw regularly at time of incident?

V49 _____

0 = No

1 = Yes

9 = Unknown

50. What was the defendant's primary and, if applicable, secondary occupational skill at the time of the homicide? If the respondent knows the precise skill, enter code from the indented list. If only the general category is known, enter code for the major heading, e.g., if other white-collar, code 30.

10 = Professional and Managerial

- 11 = Professional (doctor, lawyer, etc.)
- 12 = Executive, business person
- 13 = Small business/farm owner
- 14 = Judge, legislator

Primary X86 ____|____

Secondary X87 ____|____

20 = Law Enforcement and Military

- 21 = Police officer, firefighter, corrections officer
- 22 = Military (enlisted)
- 23 = Military (officer)

30 = White-collar

- 31 = Office worker
- 32 = Apartment/hotel manager
- 33 = Store manager
- 34 = Secretary
- 35 = Any government officer or employee
 - 351 = Government officer
 - 352 = Government employee

40 = Blue-Collar and Unskilled

- 41 = Blue-collar (all skilled laborers will be considered blue collar; e.g., mechanics, factory workers, truck drivers)
- 42 = Farmer, fisher, farm worker
 - 421 = Farmer
 - 422 = Farm worker
- 43 = Unskilled laborer

50 = Service Workers

- 51 = Security guard
- 52 = Store clerk
- 53 = Service station attendant
- 54 = Waiter, waitress, bartender, taxi driver, or similar
- 55 = Domestic
- 56 = Custodian

60 = Unstable or Extralegal

- 61 = Drifter
- 62 = Professional criminal (organized crime)
- 63 = Prostitute or pimp
- 64 = Thief (individual criminal)
- 65 = Drug dealer
- 66 = Sporadic odd jobs, no particular skill

70 = Outside of Labor Force

- 71 = Juvenile, out of school
- 72 = Student
- 73 = Retired
- 74 = Housekeeper supported by spouse or other family
- 75 = Chronically unemployed (includes recipient of public assistance)
- 76 = Disabled

80 = Other, outside the foregoing categories (specify) _____

98 = Defendant has worked but precise skill is unknown

99 = Unknown whether defendant has ever worked at all

51. What was the defendant's employment status at the time of the offense? V52 ____|____
- 10 = Employed, unknown if full- or part-time
 - 11 = Full-time employee or self-employed in the labor force
 - 12 = Part-time employee or self-employed in the labor force
 - 20 = Unemployed, length of unemployment unknown
 - 21 = Unemployed less than 6 months
 - 22 = Unemployed over 6 months
 - 30 = Outside the labor force, supported by state, living on disability, welfare, unemployment, or social security
 - 40 = Outside the labor force, housewife, retired, student, juvenile, supported by family, etc.
 - 50 = Institutionalized, in prison, jail, hospital, drug rehabilitation center, etc.
 - 60 = Employed outside of the labor force, underground service economy, illegal activity
 - 70 = Other _____
 - 99 = Unknown
52. Defendant's employment history? X88 ____
- 1 = Never worked
 - 2 = Held unskilled jobs in the past
 - 3 = Held skilled jobs in the past
 - 4 = Held professional or managerial or white collar jobs in the past
 - 5 = Other (specify) _____
 - 9 = Unknown
53. What was the longest time the defendant held the same job (code if job ended within ten years of arrest of homicide)? V54 ____
- 0 = Less than one year
 - 1-5 = As is
 - 6 = 6 or more
 - 7 = Held job substantial period but length unknown
 - 8 = Not applicable, never worked
 - 9 = Unknown
54. Defendant's education? X89 ____
- 0 = Currently attending school (grade 1-12).
 - 1 = Didn't go beyond 4th grade
 - 2 = Didn't go beyond 8th grade
 - 3 = High school dropout
 - 4 = Graduated high school or got GED
 - 5 = Some higher education after high school
 - 6 = College degree
 - 7 = Graduate school
 - 8 = Vocational training
 - 9 = Unknown

B. OFFENDER'S CRIMINAL RECORD

(If single digit, right adjust)

55. Number of prior felony charges (including juvenile):

V56 ____|____

00 = None

1-94 (enter actual number, if known)

95 = (1-5) (estimate)

96 = (6-10) (estimate)

97 = (11-20) (estimate)

98 = (20+) (estimate)

99 = Unknown if felony charges

56. Number of prior misdemeanor charges (including juvenile):

V57 ____|____

00 = None

1-94 (enter actual number, if known)

95 = (1-5) (estimate)

96 = (6-10) (estimate)

97 = (11-20) (estimate)

98 = (20+) (estimate)

99 = Unknown if prior misdemeanor charges

57. Year of defendant's first felony arrest, including juvenile arrests:
(Estimate if necessary)

V58 ____|____|____|____

00 = Not applicable/no prior felony arrest

08 = Date of arrest unknown

09 = Unknown if felony arrest

58. Date of arrest for most recent violent crime
(consult offense codebook for violent/nonviolent designation):

V59 ____|____ ____|____ ____|____|____
MM DD YY

Blank = Not applicable/no prior violent crime arrest

01/01/08 = Arrest, but date of arrest unknown

01/01/09 = Unknown if arrest

59. Date of arrest for most recent nonviolent crime (consult offense
codebook for violent/nonviolent designation):

V60 ____|____ ____|____ ____|____|____
MM DD YY

(Code year if month or day unknown)

Blank = Not applicable/no prior nonviolent crime arrest

01/01/08 = Arrest, but date of arrest unknown

01/01/09 = Unknown if prior arrest

60. Was the defendant under criminal justice supervision at the time of the offense?

V64 ____

0 = No

1 = Probation

2 = Parole

3 = On bail

4 = Intensive supervision or house arrest

5 = In custody

9 = Unknown

61. Total prior convictions and delinquent adjudications:

00 = None

1-93 (enter actual number, if known)

94 = (1-5) (estimate)

95 = (6-10) (estimate)

96 = (11-20) (estimate)

97 = (20+) (estimate)

98 = Unknown if felony charges

98 = Convicted but exact number
of convictions unknown

99 = Unknown if convictions

In county of homicide arrest:

V65____|____

Outside county of homicide arrest:

V66____|____

Unknown if inside or outside county
of homicide arrest:

VN66A____|____

52. Past offense data (convictions only). Enter the offenses in Col. B and the number of convictions in Columns C & D:

A- Homicide

01 = Murder (1st Degree) § 28-303 03 = Manslaughter § 28-305
 02 = Murder (2nd Degree) § 28-304 04 = Other (specify) _____

B- Other crimes (Code should be entered for most comparable crime, if crime is from State other than Nebraska)

05 = Child Abuse with death § 28-707(6) 23 = Theft § 28-511 through § 28-518 (\$500 or more)
 06 = Kidnapping § 28-313(2) 24 = Forgery (1st and 2nd degree) § 28-602 & 603
 07 = Kidnapping w/safe release § 28-313(3) 25 = Passing bad checks § 28-11(1)(a) & (b)
 08 = Sexual assault (1st Degree) § 28-319 26 = Counterfeiting § 28-622 through §28-627
 09 = Sexual assault (2nd Degree) § 28-320 27 = Other violent felonies (see Neb. Crimes codebook)
 10 = Sexual abuse of an inmate § 28-322.02 28 = Other non-violent felonies (see Neb. Crimes codebook)
 11 = Sexual assault of a child § 28-320.01 29 = Violent misdemeanors (see Neb. Crimes codebook)
 12 = Arson (1st Degree) § 28-502 30 = Other non-violent misdemeanors (see Neb. Crimes codebook)
 13 = Arson (2nd Degree) § 28-503
 14 = Burglary § 28-507
 15 = Robbery § 28-324
 16 = Assault on an officer (1st-3rd Degree) § 28-929; § 28-930; § 28-931
 17 = Assault (1st Degree) § 28-308
 18 = Assault (2nd Degree) § 28-309
 19 = Firearm used in commission of a felony § 28-1205(2)(b)
 20 = Felon/fugitive possessing a firearm § 28-1206(3)(b)
 21 = Resisting arrest with a deadly weapon §28-904

If more than four offenses, code the four most serious.

Number of Offenses Codes:

00 = None 95 = (1-5) (estimate)
 1-94 (enter actual number, if known) 96 = (6-10) (estimate)
 97 = (11-20) (estimate)
 98 = (20+) (estimate)
 99 = Unknown if felony charges

MM.	List in Order of Severity of Offense	B. Offense Convicted	C. Number of Juvenile Convictions	D. Number of Adult Convictions
	Most Serious Offense	VR67 ____ ____	VR68 ____ ____	VR69 ____ ____
	2 nd Most Serious	VR70 ____ ____	VR71 ____ ____	VR72 ____ ____
	3 rd Most Serious	VR73 ____ ____	VR74 ____ ____	VR75 ____ ____
	4 th Most Serious	VR76 ____ ____	VR77 ____ ____	VR78 ____ ____
	5 th Most Serious	VR79 ____ ____	VR80 ____ ____	VR81 ____ ____
	6 th Most Serious	VR82 ____ ____	VR83 ____ ____	VR84 ____ ____
	7 th Most Serious	VR85 ____ ____	VR86 ____ ____	VR87 ____ ____
	8 th Most Serious	VR88 ____ ____	VR89 ____ ____	VR90 ____ ____

Enter total number of homicide convictions including multiple convictions (because of multiple victims) in a single transaction.

C. MENTAL HEALTH, DRUG AND ALCOHOL

Note to coders: *This section records the events in the defendant's personal history (Col. A) and further breaks down the extent to which the information was known to the sentencing authority in penalty trial cases (Col. B).*

The code(s) for Column A follow each question. Use the following code for the state of knowledge of the sentencing authority (judge(s)) (Col. B).

- 1 = Known at the point of decision
- 2 = Unknown to decision-maker at time of trial
- 8 = Not applicable because Column A coded unknown or no
- 9 = Not known if decision-maker had knowledge of factor at point of decision

Column A data may derive from any source.

Column B data should be drawn solely from guilt and sentencing phase narratives.

If no penalty trial code Q_____, col. B as "8" and omit the Column B entries for questions ____ through ____.

	<u>Col. A</u> <u>Defendant</u>	<u>Col. B</u> <u>Judge(s)</u>
63. Does defendant have a history of psychiatric problems?	V155_____	V157_____
0 = No		
1 = Yes		
9 = Unknown		
64. Was defendant previously institutionalized for mental illness?	V158_____	V160_____
0 = No		
1 = Yes		
9 = Unknown		
65. Type of prior institutionalization for drug or alcohol abuse.	V161_____	V163_____
0 = None		
1 = Inpatient		
2 = Outpatient		
3 = Both types		
8 = Yes, but type unknown		
9 = Unknown		
66. Type of institutionalization as a juvenile:	V164_____	V166_____
0 = None		
1 = Residential (Dependent)		
2 = Residential (Delinquent)		
3 = Psychiatric		
4 = Nonresidential		
8 = Institutionalized but type unknown		
9 = Unknown if institutionalized		

	Col. A <u>Defendant</u>	Col. B <u>Judge(s)</u>
67. Total number of prior institutionalizations as a juvenile:	V167_____	V169_____
0 = None		
1-6 = As is		
8 = Yes but exact number unknown		
9 = Unknown		
68. Total number of prior institutionalizations for mental illness:	V170_____	V172_____
0 = None		
1-6 = As is		
7 = Seven or more		
8 = Yes but exact number unknown		
9 = Unknown		
69. Did defendant ever participate in outpatient counseling for drugs or alcohol and/or mental health counseling at a community mental health center or elsewhere?	V173_____	V175_____
0 = No		
1 = Yes, drug		
2 = Yes, alcohol		
3 = Yes, drug and alcohol		
4 = Yes, mental health		
5 = Yes, mental health and drug/alcohol		
6 = Yes, but type unknown		
9 = Unknown		

Col. A
Defendant

Col. B
Judge(s)

70. Did defendant use drugs or alcohol within 24 hours prior to the offense? If yes, specify which one (up to two types).

If no multiple substance abuse, leave second option blank.

- 00 = No drug or alcohol use
01 = Alcohol
02 = Amphetamines
03 = Barbiturates
04 = Marijuana, hashish
05 = Cocaine (powder)
06 = Cocaine (crack)
07 = Heroin
08 = LSD, mescaline, and peyote
09 = Phencyclidine (PCP, angel dust)
10 = Methaqualone (Quaalude, Sopor, Parest)
11 = Morphine
12 = Other (specify) _____
13 = An intoxicant but type unknown
99 = Unknown

_____|_____
V176

_____|_____
V180

_____|_____
V177

_____|_____
V181

71. How was defendant affected by this drug/alcohol consumption at the time of the offense?

- 1 = Substantially
2 = Moderately
3 = Slightly
7 = Not applicable because no drug/alcohol use
8 = Defendant consumed but effect unk.
9 = Unknown

V182 _____

V184 _____

72. Using the list in Question 70, indicate whether defendant was addicted to or a heavy user of any drug around the time of the offense. (Enter up to two drug or alcohol numbers to which defendant was addicted or heavily dependant. If no multiple addiction, leave second option blank.)

- 00 = Not addicted or heavily dependent
98 = User, but type and/or amount of dependency unknown
99 = Unknown if addicted or heavy user

_____|_____
V185

_____|_____
V189

_____|_____
V186

_____|_____
V190

	Col. A <u>Defendant</u>	Col. B <u>Judge(s)</u>
73. Has defendant ever been classified by a medical doctor or psychologist as mentally retarded?	V191_____	V193_____
0 = No		
1 = Yes, borderline (IQ 71-90)		
2 = Yes, mildly retarded (IQ 50-70)		
3 = Yes, moderately retarded (IQ 35-49)		
4 = Yes, severely retarded (IQ 20-34)		
5 = Yes, profoundly retarded (IQ under 20)		
8 = Yes, but classification unknown		
9 = Unknown		
74. Does defendant's known IQ qualify him or her as mentally retarded?	V194_____	V196_____
0 = No		
1 = Yes, borderline (IQ 71-90)		
2 = Yes, mildly retarded (IQ 50-70)		
3 = Yes, moderately retarded (IQ 35-49)		
4 = Yes, severely retarded (IQ 20-34)		
5 = Yes, profoundly retarded (IQ under 20)		
8 = Yes, but classification unknown		
9 = Unknown		
75. Does defendant have a permanent physical handicap?	V197_____	V199_____
0 = No		
1 = Yes		
9 = Unknown		
76. If the answer to 75 is yes, list the handicap(s) defendant has (up to three).	V200_____	V206_____
1 = Deaf	V201_____	V207_____
2 = Hearing impaired		
3 = Blind	V202_____	V208_____
4 = Visually impaired		
5 = Orthopedic		
6 = Neurological		
7 = Other (specify) _____		
8 = Not applicable (Code first variable only)		
9 = Unknown		

Col. A
Defendant

Col. B
Judge(s)

77. Has defendant ever been diagnosed as any of the following?

V248_____

V250_____

- 0 = None
1 = Brain damaged
2 = Other mental deficiency
3 = Epileptic
4 = Other similar disability (specify) _____
9 = Unknown

78. What is defendant's military record?

V251_____

V253_____

- 0 = None
1 = Formerly served in military, honorable discharge
2 = Formerly served in military, other than honorable discharge
3 = Now in the military
4 = Other (specify) _____
8 = Military service but current status unknown
9 = Unknown if military record

79. Has the defendant ever been in military combat, either in Vietnam or in any other circumstances?

V254_____

V256_____

- 0 = No
1 = Yes
2 = Yes, diagnosed as having post-traumatic stress disorder/syndrome
7 = N/A, no military service
8 = Military service, but unknown if in combat
9 = Unknown if in military

III. VICTIM'S BACKGROUND

80. Victim Race, Ethnicity Gender, Religion and Age

A	B Last Name	C Race	D Ethnicity	E Gender	F Religion	G Age
1. Primary Victim	<u> </u> X91	<u> </u> X92	<u> </u> X93	<u> </u> X94	<u> </u> X95	<u> </u> X96
2. Second Victim	<u> </u> X97	<u> </u> X98	<u> </u> X99	<u> </u> X100	<u> </u> X101	<u> </u> X102
3. Third Victim	<u> </u> X103	<u> </u> X104	<u> </u> X105	<u> </u> X106	<u> </u> X107	<u> </u> X108
4. Fourth Victim	<u> </u> X109	<u> </u> X110	<u> </u> X111	<u> </u> X112	<u> </u> X113	<u> </u> X114
5. Fifth Victim	<u> </u> X115	<u> </u> X116	<u> </u> X117	<u> </u> X118	<u> </u> X119	<u> </u> X120

The "Primary Victim" is the victim whose murder was the most aggravated. If this is not clear, enter alphabetically by last name if known. Beyond primary victim enter alphabetically by last name, if known. If there are more than 5 victims, enter the additional items on a comment sheet and attach it to the ISI.

CODING FOR RACE (Col. C):

- | | |
|----------------------|---------------------------|
| 1 = White | 4 = Native American |
| 2 = African American | 6 = Other (specify) _____ |
| 3 = Asian | 9 = Unknown |

CODING FOR ETHNICITY. Is Victim Hispanic? (Col. D)

- | | |
|---------|--|
| 1 = Yes | 3 = Spanish surname, but unknown if Hispanic |
| 2 = No | 9 = Unknown |

CODING FOR GENDER. (Col. E)

- 1 = Male 0 = Female 9 = Unknown

CODING FOR RELIGIOUS PREFERENCE (Col. F).

- | | | |
|----------------------------------|-------------------------------|---|
| 1 = Roman Catholic | 8 = Mormon (LDS) | 13 = Atheist |
| 2 = Lutheran | 9 = Odinist/Asatru | 14 = Agnostic |
| 3 = Presbyterian | 10 = Native American religion | 15 = Other |
| 4 = Methodist | 11 = Islamic/Muslim | |
| 5 = Baptist | 12 = Buddhist | 88 = Victim has a religious preference, but identity of preference is unknown |
| 6 = Christian (generally stated) | | 99 = unknown if victim has a religious preference |
| 7 = Jewish | | |

CODING FOR AGE (Col. G).

- 0-98 Actual Age at death
a = pre-school (under 6)
b = child (6-12)
c = teenager
d = adult (20-65)
e = aged
99 = unknown

81. Primary Victim's Sexual Orientation and Behavior (Code all that apply)

- | | | | |
|-----|--------------|-------|-------|
| 1 = | heterosexual | VN610 | _____ |
| 2 = | homosexual | | |
| 3 = | bisexual | VN611 | _____ |
| 4 = | trans-sexual | | |
| 5 = | transvestite | VN612 | _____ |
| 6 = | Other: _____ | | |
| 9 = | unknown | VN613 | _____ |

81A. Second Victim's Sexual Orientation and Behavior (Code all that apply)

- | | | | |
|-----|--------------|-------|-------|
| 1 = | heterosexual | VN614 | _____ |
| 2 = | homosexual | | |
| 3 = | bisexual | VN615 | _____ |
| 4 = | trans-sexual | | |
| 5 = | transvestite | VN616 | _____ |
| 6 = | Other: _____ | | |
| 9 = | unknown | | |

81B. Third Victim's Sexual Orientation and Behavior (Code all that apply)

- | | | | |
|-----|--------------|-------|-------|
| 1 = | heterosexual | VN617 | _____ |
| 2 = | homosexual | | |
| 3 = | bisexual | VN618 | _____ |
| 4 = | trans-sexual | | |
| 5 = | transvestite | VN619 | _____ |
| 6 = | Other: _____ | | |
| 9 = | unknown | VN620 | _____ |

81C. Fourth Victim's Sexual Orientation and Behavior (Code all that apply)

- | | | | |
|-----|--------------|-------|-------|
| 1 = | heterosexual | VN621 | _____ |
| 2 = | homosexual | | |
| 3 = | bisexual | VN622 | _____ |
| 4 = | trans-sexual | | |
| 5 = | transvestite | VN623 | _____ |
| 6 = | Other: _____ | | |
| 9 = | unknown | VN624 | _____ |

81D. Fifth Victim's Sexual Orientation and Behavior (Code all that apply)

- | | | | |
|-----|--------------|-------|-------|
| 1 = | heterosexual | VN625 | _____ |
| 2 = | homosexual | | |
| 3 = | bisexual | VN626 | _____ |
| 4 = | trans-sexual | | |
| 5 = | transvestite | VN627 | _____ |
| 6 = | Other: _____ | | |
| 9 = | unknown | VN628 | _____ |

Economic Status of Primary Victim:

82. What was the Primary Victim's primary and, if applicable, secondary occupational skill at the time of the homicide? If the respondent knows the precise skill, enter code from the indented list. If only the general category is known, enter code for the major heading, e.g., if other white-collar, code 30. The "Primary Victim" is the victim whose murder was the most aggravated. If this is not clear, enter the first victim alphabetically by last name if known.

10 = Professional and Managerial

Primary $\frac{\quad}{\text{X121}}$

11 = Professional (doctor, lawyer, etc.)

12 = Executive, business person

13 = Small business/farm owner

14 = Judge, legislator

Secondary $\frac{\quad}{\times 122}$

20 = Law Enforcement and Military

21 = Police officer, firefighter, corrections officer

22 = Military (enlisted)

23 = Military (officer)

30 = White-collar

31 = Office worker

32 = Apartment/hotel manager

33 = Store manager

34 = Secretary

35 = Any government officer or employee

351 = Government officer

352 = Government employee

40 = Blue-Collar and Unskilled

41 = Blue-collar (all skilled laborers will be considered blue collar; e.g., mechanics, factory workers, truck drivers)

42 = Farmer, fisher, farm worker

421 = Farmer

422 = Farm worker

43 = Unskilled laborer

50 = Service Workers

51 = Security guard

52 = Store clerk

53 = Service station attendant

54 = Waiter, waitress, bartender, taxi driver, or similar

55 = Domestic

56 = Custodian

60 = Unstable or Extralegal

61 = Drifter

62 = Professional criminal (organized crime)

63 = Prostitute or pimp

64 = Thief (individual criminal)

65 = Drug dealer

66 = Sporadic odd jobs, no particular skill

70 = Outside of Labor Force

71 = Juvenile, out of school

72 = Student

73 = Retired

74 = Housekeeper supported by spouse or other family

75 = Chronically unemployed (includes recipient of public assistance)

76 = Disabled

80 = Other, outside the foregoing categories (specify) _____
 98 = Victim has worked but precise skill is unknown
 99 = Unknown whether victim has ever worked at all

83. Primary Victim's employment history?

X123 _____

- 1 = Never worked
- 2 = Held unskilled jobs in the past
- 3 = Held skilled jobs in the past
- 4 = Held professional or managerial or white collar jobs in the past
- 5 = Other _____ (specify)
- 9 = Unknown

84. Did the victim have a family or dependent(s)? (enter up to two):

V263 _____

- 0 = No
- 1 = Spouse
- 2 = Minor child (under 19)
- 3 = Dependent parents or adult children
- 4 = Other dependent relatives
- 5 = Other dependent persons
- 9 = Unknown, first variable only

V264 _____

85. What was the relationship between the victim and the defendant prior to the events immediately preceding the homicide?

V265 _____ | _____

Victim was to defendant:

Intimate or Family

- 01 = Spouse
- 02 = Ex-spouse
- 03 = Paramour, different sex
- 04 = Paramour, same sex
- 05 = Child, grandchild
- 06 = Step-child
- 07 = Parent
- 08 = Grandparent
- 09 = Sibling
- 10 = Other relative
- 11 = Sexual rival
- 12 = Former paramour, different sex
- 13 = Former paramour, same sex
- 14 = Other (specify) _____

Friend or Acquaintance

- 20 = Friend
- 21 = Neighbor
- 22 = Acquaintance
- 23 = Employer
- 24 = Employee
- 25 = Co-worker
- 26 = Current or former associate in illegal activities
- 27 = Rival or competitor in illegal activities
- 28 = Known to defendant by sight or reputation
- 29 = Other (specify) _____

Stranger

- 30 = Stranger
- 99 = Nature of relationship unknown

IV. CHARACTERISTICS OF THE HOMICIDE

A. SCENE OF THE CRIME

86. Where did the homicide occur?

V266 ____|____

Residence

- 01 = Residence of victim
- 02 = Residence of victim's close friend or relative, other than defendant
- 03 = Residence of defendant
- 04 = Residence of defendant's close friend or relative, other than victim
- 05 = Residence of codefendant
- 06 = Other residence
- 07 = Residence of victim and defendant/codefendant
- 08 = Hotel, motel or other short-term residence
- 09 = Common area of apartment building/complex

Business

- 10 = Convenience or grocery store
- 11 = Liquor store
- 12 = Service station
- 13 = Bar or cocktail lounge or immediate vicinity
- 14 = Victim's place of business or employment
- 15 = Defendant's place of business or employment
- 16 = Codefendant's place of business or employment
- 17 = Other place of business

Public Place or Public Institution

- 18 = Private vehicle of decedent
- 19 = Private vehicle of defendant or codefendant
- 20 = Private vehicle of third person other than decedent
- 21 = Parking lot or vacant lot
- 22 = Highway or freeway
- 23 = Country road
- 24 = Street or sidewalk
- 25 = Park or school grounds
- 26 = Field or woods
- 27 = Other non-commercial public place
- 28 = Jail, prison, lawful custody of police or corrections
- 29 = Hospital
- 30 = Cab, bus or other public transportation (include subway platform and stairs)
- 31 = Other
- 99 = Unknown

87. Enter County Number of the location of the homicide
(See codebook; Douglas = 01; Lancaster = 02, etc.)

V267 ____|____

88. Defendant's method of entry to place of homicide was: V268_____
- 1 = Entry with permission (includes joint living quarters)
 - 2 = Uninvited but not forced (open door, window)
 - 3 = Forced entry
 - 4 = Public establishment (e.g. bar, restaurant, museum)
 - 5 = Other (specify) _____
 - 8 = Not applicable because no entry (e.g. out of doors)
 - 9 = Unknown
89. Did defendant or coperpetrator come to the scene of the crime armed with the weapon ultimately used to kill the victim?
- Defendant: V269_____
- Coperpetrator: V270_____
- 0 = No
 - 1 = Yes
 - 8 = Not applicable because no weapon used (e.g.. fists, feet) or no coperpetrator (second variable)
 - 9 = Unknown

B. METHOD OF KILLING

90. Murder weapon

Primary: V277____|____

Secondary: V278____|____

A. Firearm

- 01 = Handgun, but type unknown
- 02 = Semi-automatic
- 03 = Revolver
- 04 = Assault rifle
- 05 = Other rifle
- 06 = Shotgun
- 07 = Sawed off shotgun
- 08 = Other firearm (specify) _____

B. Knife or other sharp instrument

- 10 = Stabbed with knife
- 11 = Struck with ax or similar sharp instrument
- 12 = Other (specify) _____

C. Beating

- 20 = Beaten with a baseball bat
- 21 = Beaten with other blunt object
- 22 = Beaten with fists or feet
- 23 = Other (specify) _____

D. Other

- 30 = Strangled with hands
- 31 = Strangled with a rope or other cord
- 32 = Smothered or suffocated
- 33 = Drowned
- 34 = Burned or suffocated in arson
- 35 = Burned by flame, hot substance, acid
- 36 = Crushed or struck by auto
- 37 = Overdose of drugs/narcotics
- 38 = Poison
- 39 = Neglected or deprived (e.g. starved)
- 40 = Thrown from a high place
- 41 = Traumatized by assault which caused heart attack/stroke
- 42 = Other (specify) _____
- 99 = Unknown

91. Did the killing involve the use of a bizarre weapon
(e.g., hacksaw, claw-end of a hammer, icepick)?

V279_____

0 = No 1 = Yes 9 = Unknown

C. NON-STATUTORY AGGRAVATING CIRCUMSTANCES OF THE VICTIM (Q92)

Part A. Circumstances of the Victim.

- 1 = Expressly stated in file
 2 = Suggested by the file but not specifically indicated
 7 = None of the conditions in Q80 is applicable (code first variable only)
 8 = Inconsistent with information in file
 9 = Unable to classify as 1, 2 or 8

- (a) Bed-ridden/handicapped V280____
- (b) Mentally impaired V281____
- (c) Defenseless because of youth. V282____
- (d) Defenseless because of advanced age. V283____
- (e) Pregnant. V284____
- (f) Victim was asleep or had just awakened. V285____
- (g) Victim defenseless because of gross disparity in physical sizes V286____
- (h) Victim defenseless due to gross intoxication (alcohol or drugs) V287____
- (i) Victim defenseless because of physical condition or weakness V288____
- (j) Victim supporting children V289____
- (k) Homicide occurred while victim was kidnapped by defendant or coperpetrator V291____
- (l) Either the victim or someone in victim's company was raped or sexually abused V292____
- (m) RESERVED [Victim defenseless because of number of co-perpetrators] V293____

Part B. Victim Impact.

A Witness Type	B Number of Witnesses	C. Correspondence
VN293A _____	VN293F _____	VN293K _____
VN293B _____	VN293G _____	VN293L _____
VN293C _____	VN293H _____	VN293M _____
VN293D _____	VN293 I _____	VN293N _____
VN293E _____	VN293J _____	VN293O _____

Testimony Codes

- | | |
|------------------------------------|---|
| 1 = family and friends | 5 = investigator/mitigation specialists |
| 2 = well established acquaintances | 6 = mental health witnesses |
| 3 = employer, co-workers | 7 = other (specify) _____ |
| 4 = clergy | |

D. NON-STATUTORY AGGRAVATING FEATURES OF THE OFFENSE (Q93)

Part A. Enter up to 10 factors. Do not rank order your entries but if there are more than 10 factors applicable, enter the 1 most serious.

	<u>PART A</u>
01 = Methodical infliction of severe pain to punish victim, to extract information, or to satisfy sadistic urge (specify) _____	V294 _____
02 = Brutal clubbing or other unnecessarily painful method of attack	V295 _____
03 = Brutal stomping or beating with hands or feet	V296 _____
04 = Mutilation during the homicide	V297 _____
05 = Multiple gunshot wounds	V298 _____
06 = Single shot to head	V299 _____
07 = Multiple gunshots to head	V300 _____
08 = Slashed throat	V301 _____
09 = Multiple stabbing	V302 _____
10 = Other mode of multiple lethal or painful attack	V303 _____
11 = Extremely bloody	
12 = Victim or a nondecedent victim held hostage (other than kidnap)	
13 = Victim or a nondecedent bound or gagged	
14 = Victim or a nondecedent forced to disrobe or disrobed by perpetrator (In whole or in part)	
15 = Attempt to dispose of/conceal body after death	
16 = Multiple victims	
17 = Bodily harm to one other than a decedent	
18 = Sniper killing	
19 = Luring/ambushing/lying in wait	
20 = Victim killed in presence of family members or close friends	
21 = Ten or more stab wounds or shots, except when murder weapon was a penknife or other small cutting instrument	
22 = Physical details of the crime are unusually repulsive (e.g., victim drowned in own blood)	
23 = Other _____	
24 = Defendant searched for and selected victim based on identifiable characteristics	
00 = None of the above special aggravating circumstances present in the case (Code first variable only)	

Part B

- 1 = Expressly stated in file
 2 = Suggested by the file but not specifically indicated
 7 = None of the conditions in part B is applicable (Code first variable only)
 0 or 8 = Inconsistent with information in file
 9 = Unable to classify as 1, 2, or 0/8

PART B

- | | | |
|-----|--|-----------|
| (a) | Homicide planned for more than five minutes | V304_____ |
| 2. | Planned contemporaneous offense for more than
five minutes | V305_____ |
| (c) | Execution-style homicide (homicide against
subdued or passive victim) | V306_____ |
| (d) | Case involved contemporaneous felony and
homicide was unnecessary to complete the crime
(e.g., storekeeper hands over money and offers no
resistance) | V307_____ |
| (e) | Victim pleaded for life | V308_____ |
| (f) | Victim was not clothed (in whole or in part) at the
time of the homicide | V309_____ |
| (g) | Sexual perversion or abuse other than rape | V310_____ |

For Q94-Q95 the victim should be the same. For Q96-Q100 the victims may be different for each question.

	<u>Victim #1</u>	<u>Victim #2</u>
	_____ (Name)	_____ (Name)
94. If victim (decedent or non-decedent) suffered severe physical suffering immediately prior to death, what was the mode of mistreatment? (If more than two victims choose the two with the most severe suffering and enter up to three for each).		
01 = Punching or kicking		
02 = Stabbing		
03 = Beat with baseball bat	V311____ ____	V314____ ____
04 = Beat with other blunt object		
05 = Shooting	V312____ ____	V315____ ____
06 = Burning		
07 = Sexual attack	V313____ ____	V316____ ____
08 = Imprisonment		
09 = Other physical mistreatment, describe: _____		
98 = Not applicable because no such suffering. (Code for both victims if applicable and omit Q83 and Q84).		
99 = Unknown		
95. How long did this mistreatment persist?	V317____	V318____
1 = Briefly, during the uninterrupted time period it took to cause death or unconsciousness		
2 = Under 15 minutes		
3 = 15 to 30 minutes		
4 = 30 minutes to 1 hour		
5 = 1 to 3 hours		
6 = More than 3 hours		
8 = Not applicable		
9 = Unknown		

Victim #1

Victim #2

96. If there was severe physical pain, indicate the source: (Use up to 3)

- 1 = Unusual method or weapon
 - 2 = Place of wounds
 - 3 = Number of wounds/blows
 - 4 = Number of persons taking part in the attack
 - 5 = Duration of the attack
 - 6 = Other _____
 - 8 = Not applicable
 - 9 = Unknown
- _____

V319 _____

V322 _____

V320 _____

V323 _____

V321 _____

V324 _____

For Q96-Q100, if more than two victims, decedent or nondecedent, code for the most seriously injured for which the question is applicable; the victims need not be the same for each question.

For Q96-Q99, use exact number of wounds if known, otherwise use:

- 91 = 1-4
- 92 = 5-6
- 93 = 7-10
- 94 = 11-20
- 95 = 21-50
- 96 = More than 50
- 97 = Multiple wounds but exact number unknown
- 98 = Not applicable because inconsistent with information in file
- 99 = Unknown

Victim #1

Victim #2

97. Enter total number of wounds:

V325 _____|_____

V326 _____|_____

98. If there were stab wounds, indicate the number:

(a) Total

V327 _____|_____

V330 _____|_____

(b) To head

V328 _____|_____

V331 _____|_____

(c) To other parts of body

V329 _____|_____

V332 _____|_____

Victim #1

Victim #2

99. If there were gunshot wounds, indicate the number:

(a) Total

V333____|____

V336____|____

(b) To head

V334____|____

V337____|____

(c) To other parts of body

V335____|____

V338____|____

100. If there were trauma wounds (e.g., bat blows), indicate the number:

(a) = Total

V339____|____

V342____|____

(b) = To head

V340____|____

V343____|____

(c) = To other parts of body

V341____|____

V344____|____

101. Indicate the parts of the body on which wounds were inflicted:

(Enter up to three in order of severity)

V345____

V348____

1 = Head

V346____

V349____

2 = Neck

3 = Torso

V347____

V350____

4 = Genitals

5 = Limbs

9 = Unknown

Blank = Not applicable

102. Was victim's body abused?
(Enter up to two. If one or more present, code occurrence variable)

Col. A

Col.B

V351_____

V353_____

V352_____

V354_____

Col. A: Type of Abuse code

- 1 = Dismembered
- 2 = Otherwise mutilated
- 3 = Sexually attacked
- 4 = Burned
- 5 = Placed in trash or dump
- 6 = Thrown in body of water
- 7 = Other _____
- 8 = Not applicable because no indication of abuse
- 9 = Yes, but precise nature unknown

Col. B: Occurrence code (answer if any Part A response is 1-4):

- 1 = Occurred before death
- 2 = Occurred after death
- 3 = Occurred both before and after death
- 4 = Some abuse occurred before death and unknown if other abuse occurred before or after death
- 5 = Some abuse occurred after death and unknown if other abuse occurred before or after death
- 8 = Not applicable because no abuse
- 9 = Occurred but unknown if it occurred before or after death

E. NON-STATUTORY AGGRAVATING FEATURES OF THE OFFENSE SPECIFICALLY ATTRIBUTABLE TO THE DEFENDANT

103. Enter as many factors as appropriate.

1 = Expressly stated in the file

2 = Suggested by the file but not specifically indicated

7 = None of the conditions in Q103 is applicable (code first variable only)

0 or 8 = Inconsistent with information in file

9 = Unable to classify as 1, 2 or 0/8

- | | |
|---|------------|
| (a) Defendant lay in wait or otherwise ambushed the victim | V355_____ |
| (b) Defendant showed no remorse for homicide | V356_____ |
| (c) Defendant expressed pleasure with homicide | V357_____ |
| (d) Defendant committed or is alleged to have committed additional crimes between the time of the homicide and the time of arrest (whether or not charged) that were not part of the transaction that produced the homicide | V358_____ |
| (e) RESERVED | V359_____ |
| (f) Defendant otherwise actively resisted or avoided arrest, e.g., by flight or going into hiding | V360_____ |
| (g) Defendant was on escape from, or in, lawful custody of a peace officer or place of lawful confinement | V361_____ |
| (h) Defendant was a fugitive from a prior violent felony crime | VR362_____ |
| (i) Defendant interfered with the judicial process, e.g., by threatening witnesses or jurors or suborning perjury | V363_____ |
| (j) Defendant was implicated in other killings even though not convicted of them | V364_____ |
| (k) Defendant previously attempted to kill the victim | V365_____ |
| (l) Defendant had history of previous assaultive conduct toward victim | V366_____ |
| (m) The defendant threatened, in victim's presence, to kill victim's family members or others who were close to the victim | V367_____ |
| (n) The defendant announced <u>in advance</u> to a third person an intention to kill the victim, (unless the case involved a lovers' triangle or quarrel, or when third party was coperpetrator) | V368_____ |
| (o) Abandoned dying victim under circumstances in which it was apparent the victim might survive if medical help sought | V369_____ |
| (p) Hid or moved dying victim, reducing chance of victim being aided | V370_____ |
| (q) Continued or resumed a painful attack after it was apparent the victim was dying | V371_____ |

V. PEOPLE KILLED, INJURED, OR PUT AT GRAVE RISK OF DEATH

104. Total number of victims killed: X90 _____
- 1-7 = As is
8 = 8 or more
9 = Unknown
105. Number of victims killed when defendant either was the trigger-man or physically participated in the killing (enter actual number): V373 _____
- 0 = None
1-7 = As is
8 = Defendant's role unknown, and 1 victim
9 = Defendant's role unknown, and 2 or more victims
106. Number of persons physically injured, other than deceased victims, by defendant or coperpetrators (enter actual number):
- Defendant: V374 _____
- Coperpetrator: V375 _____
- 0 = None
1-5 = As is
6 = Some people injured, but exact number unknown
7 = None, although other people were present
9 = Unknown
Blank = Not applicable
107. How many people other than the victim were exposed to risk of death? V376 _____
- 0 = No indication in file of others at risk
1-3 = As is
4 = 1-5 people
5 = 6-10 people
6 = 11-15 people
7 = More than 15 people
8 = More than 1 but exact number unknown
9 = Others in vicinity but unknown if placed at risk
108. How were others placed at risk? V377 _____
- 1 = Firearm
2 = Flailing with knife or axe
3 = Flailing with bat, club or other blunt instrument
4 = Flailing with fists or feet
5 = Fire
6 = Explosive device
7 = Other _____
8 = Not applicable because no others at risk of death
9 = Unknown

109. If a gun was used, number of shots fired (enter actual number).

00-88 = As is

By defendant:

V378____|____

If only estimate is possible:

By coperpetrator

(omit if no coperpetrator):

V379____|____

89 = 1-2

90 = 3-4

91 = 5-6

92 = 7-10

92 = 11-20

94 = 21-30

95 = More than 30

96 = One or more but number unknown

97 = One or more but unsure whether defendant or coperpetrator was shooter

98 = Not applicable because no gun used

99 = Unknown if multiple shots

VI. DEFENDANT'S MOTIVES

110. What was defendant's motive? (At least one motive must be coded for each case.)

Code for this question:

- 1 = The file strongly supports such an inference
- 2 = The file provides a rational basis for a fact-finder to find beyond a reasonable doubt that the factor is present
- 3 = The file contains some evidence supporting such an inference
- Blank = Not a motive, i.e., inconsistent with information in the file
- 9 = Unable to classify as 1, 2, 3 or Blank (code last variable only)

I. Hatred, Retaliation, or Revenge

- (a) Long-term hatred of victim V380_____
- (b) Retaliation or revenge for prior harm to defendant or another V381_____
- (c) To avenge the role played by a present or former judicial officer, prosecutor, or lawyer
in the exercise of his/her duty V382_____
- (d) To avenge the role played by a present or former police officer V383_____
- (e) When the victim was a public servant, e.g., a police officer, hatred of or contempt for
victim's class of public servant V384_____
- (f) Racial animosity V385_____
- (g) Animosity towards Victim because of Victim's Sexual Orientation (or Defendant's
perception of the Victim's Sexual Orientation) VN385A_____

II. Money/Property

- (a) To facilitate obtaining, at the time of the killing, money or any other item of monetary
value for defendant or another V386_____
- (b) To fulfill a contract/agreement with a third party to kill the victim as consideration for
the receipt, or in expectation of the receipt, of anything of pecuniary value (contract
killing) V387_____
- (c) Collect insurance proceeds V388_____
- (d) Obtain an inheritance or property transfer as a result of the victim's death V389_____

III. Rage or Irrational

- (a) Immediate rage or frustration (e.g., over victim's conduct of card game or drug
transaction) V390_____
- (b) To experience pleasure or gratification from killing, e.g., thrill kill V391_____
- (c) To demonstrate physical or psychological prowess V392_____
- (d) None apparent suggesting complete indifference to value of life e.g., defendant acted
without anger or frustration or other recognizable human emotion V393_____

IV. Sexual

- (a) Desire for sexual gratification V394____
- (b) Retaliation for sexual refusal V395____
- (c) Retaliation for sexual rivalry, i.e., jealousy V396____

V. Related to Other Crime(s)

- (a) To facilitate the commission of another crime, e.g., kidnapping, robbery, rape V397____
- (b) Panic, e.g., defendant became frightened when surprised by crime victim in the course of a burglary V398____
- (c) Shootout with crime victim V399____
- (d) Crime victim resisted defendant by force or threatened defendant, e.g., pushed silent police alarm V400____
- (e) To silence a witness to crime just committed or attempted by defendant or coperpetrator V401____
- (f) To silence a witness sought out subsequent to the commission of an earlier crime V402____
- (g) To escape apprehension, trial, punishment, or confinement for a prior offense committed by the defendant or another, e.g., avoid questioning by law officer or resisting arrest V403____
- (h) Dispute with drug competitor, retaliation for unpaid drug debt, or other dispute related to drug trade V404____

VI. Other Motives

- (a) None apparent, suggesting action was drug induced, e.g., PCP V405____
- (b) No personal interest in decedent's death but acting out of loyalty to gang member or associate V406____
- (c) Other (specify) _____ V407____

VII. ROLE OF COPERPETRATOR

111. Number of Co-Perpetrators:

X36

- 0 = If there were no Co-Perpetrators
- 1-7 = Number of Co-Perpetrators
- 8 = There were Co-Perpetrators but the number is unknown
- 9 = Unknown whether there were Co-Perpetrators

112. Name(s) and Status of Co-Perpetrators:

If there were no co-perpetrators, leave the Last Name variables blank. If Master List Case number is unknown, or it is unknown if a case exists, code 9 in the last case number block. If the Co-Perpetrator was not charged with a homicide, code 8 in the last case number block.

	A	B	C	D
A.	Co-Perpetrator's Last Name	Co-Perpetrator's Master List Case Number	Co-Perpetrator's Status	Outcome
	#1 _____	_/_/_/_/_/ X37	_____ X38	_____ _____ X39 VN407A
B.	Co-Perpetrator/Co-Defendant's Last Name	Co-Perpetrator's Master List Case Number	Co-Perpetrator's Status	Outcome
	#2 _____	_/_/_/_/_/ X40	_____ X41	_____ _____ X42 VN407B
C.	Co-Perpetrator/Co-Defendant's Last Name	Co-Perpetrator's Master List Case Number	Co-Perpetrator's Status	Outcome
	#3 _____	_/_/_/_/_/ X43	_____ X44	_____ _____ X45 VN407C
D.	Co-Perpetrator/Co-Defendant's Last Name	Co-Perpetrator's Master List Case Number	Co-Perpetrator's Status	Outcome
	#4 _____	_/_/_/_/_/ X46	_____ X47	_____ _____ X48 VN407D

C - For Column C (Co-Perpetrators's Charging Status) code as follows:

- 1 = Defendant and Co-Perpetrator were charged together and tried together
- 2 = Co-Perpetrator was charged with the Defendant but entered a plea or was tried separately from the Defendant
- 3 = Co-Perpetrator was not charged
- 4 = Other (specify) _____
- 5 = Co-Perpetrator was charged only with a non-homicide charge
- 9 = unknown

If there are additional co-perpetrators, list the information on the attached note sheets.

D - For Column D (Outcomes for Coperpetrators Charged)(omit coding if no charges filed; if charges were filed do not leave completely blank and enter up to 2 foils)

- 1 = Coperpetrator received the same or similar sentence as the defendant.
- 2 = Coperpetrator received a greater sentence than the defendant.
- 3 = Coperpetrator received a lesser sentence than the defendant.
- 4 = Coperpetrator received a death sentence
- 5 = Coperpetrator negotiated a plea bargain with a waiver of the death penalty
- 6 = Coperpetrator cooperated with prosecutors (e.g. provided testimony or information inculcating the defendant).
- 7 = Coperpetrator was acquitted or charges were dismissed
- 8 = Charges against coperpetrator were still pending at cut-off date of study
- 9 = Outcome of charges against coperpetrator is unknown

113. Co-perpetrator(s)' most serious conviction (Row A) and role (Row B). (If there were more than 3 co-perps, code the 3 with a level of culpability most comparable to the defendant).

Last name and first name initial (e.g. Smith, G.)	Co-perpetrator #1 _____	Co-perpetrator #2 _____	Co-perpetrator #3 _____
A. Most serious crime convicted of	V410 _____	V411 _____	V412 _____
B. Role of coperpetrator	V413 _____	V414 _____	V415 _____

A- Offense code (Row A)

- 0 = No coperpetrator
- 01 = Murder (1st Degree) § 28-303
- 02 = Murder (2nd Degree) § 28-304
- 03 = Manslaughter § 28-305
- 04 = Other homicide (specify) _____

NOTE: If Conviction is not from Nebraska, code most comparable crime

- 05 = Kidnapping § 28-313(2)
- 06 = Kidnapping w/safe release § 28-313(3)
- 07 = Sexual assault (1st Degree) § 28-319
- 08 = Sexual assault (2nd Degree) § 28-320
- 09 = Sexual abuse of an inmate § 28-322.02
- 10 = Arson (1st Degree) § 28-502
- 11 = Arson (2nd Degree) § 28-503
- 12 = Burglary § 28-507
- 13 = Robbery § 28-324
- 14 = Assault (1st Degree) § 28-308
- 15 = Assault (2nd Degree) § 28-309
- 16 = Firearm used in commission of a felony § 28-1205(2)(b)
- 17 = Felon/fugitive possessing a firearm § 28-1206(3)(b)
- 18 = Delivery controlled substance/Possess with intent to deliver § 28-416
- 19 = Other violent felonies (see Neb. Crimes codebook)
- 20 = Other non-violent felonies (see Neb. Crimes codebook)
- 21 = Other violent misdemeanors (see Neb. Crimes codebook)
- 22 = Other Non-violent misdemeanors (see Neb. Crimes codebook)
- 97 = Co-perpetrator convicted but offense unknown
- 98 = Not applicable because co-perpetrator not convicted of a crime
- 99 = Unknown if co-perpetrator convicted of a crime

B- Code for Role of Coperpetrator (Row B):

- 0 = Technical accomplice only: no assistance in homicidal act (e.g. guard)
- 1 = Provided assistance, but did not commit homicidal act
- 2 = Committed homicidal act together with other(s)
- 3 = Primary assailant in act committed with other(s)
- 4 = Alone committed homicidal act
- 5 = Role unknown

120. Compared to this defendant, was the most culpable coperpetrator's role in this homicide

V416 _____

- 1 = Much less blameworthy
- 2 = Somewhat less blameworthy
- 3 = Of about the same level of blameworthiness
- 4 = Somewhat more blameworthy
- 5 = Much more blameworthy
- 8 = Not applicable
- 9 = Unknown

VIII. DEFENSE TO CHARGES

114. Defense at guilt phase of trial or plea. Enter up to two. If more than two enter the two strongest defenses.

A. DEFENSES

Col. A (Defenses)

Col. A
(Defenses) -

Col. B
(Evidence)

- 02 = Accident
- 04 = Mistaken identity
- 08 = Defense of self or others, home or property
- 14 = Insanity
- 19 = Argued witnesses were not credible
- 20 = Other _____
- 22 = Not Applicable because defendant admitted guilt and no defense was asserted
- 99 = Unknown if a defense was asserted, or the crime was admitted

VR417 _____ | _____

VR421 _____

VR418 _____ | _____

VR422 _____

Col. B (Evidence)

- 1 = Expressly stated in file
- 2 = Suggested by the file but not specifically indicated

B. EXPERT TESTIMONY PRESENTED AT PENALTY TRIAL

Code for questions 115:

Type of Expert Witness Code:

- 00 = None presented
- 01 = Defense psychiatrist
- 02 = Defense psychologist
- 03 = Defense neurologist or other physician
- 04 = Defense expert but status unknown
- 05 = Defense social worker, mitigation specialist
- 06 = Court ordered psychiatrist
- 07 = Court ordered psychologist
- 08 = Court ordered neurologist or other physician
- 09 = Court ordered social worker, education specialist
- 10 = Court ordered expert but status unknown
- 11 = Prosecution psychiatrist
- 12 = Prosecution psychologist
- 13 = Prosecution neurologist or other physician
- 14 = Prosecution social worker, education specialist
- 15 = Prosecution expert but status unknown
- 99 = Unknown whether presented
- Blank = Not applicable (e.g., defendant pled guilty)

Testimony Content Code: Witness testified that:

- 1 = Defendant had a mental disease, defect or disorder that had an effect on defendant's homicidal conduct
- 2 = Defendant had a mental disease, defect or disorder but it had no effect on defendant's homicidal conduct
- 3 = Defendant had no mental disease, defect or disorder
- 4 = Other (specify) _____
- 7 = Testimony presented but content unknown
- 8 = Not applicable, no expert testimony was presented
- 9 = Unknown whether testimony was presented

115. For cases that had a penalty trial, was expert testimony on the defendant's mental history, capacity or mental state presented to the judge at the penalty phase? (Enter up to two)

Type of Expert Witness

V429 ____|____

V431 ____|____

Testimony Content

V430 ____

V432 ____

116. Did a defense investigator or mitigation specialist testify at the penalty trial?

V434 ____

- 0 = No
- 1 = Yes
- 8 = Not applicable
- 9 = Unknown

IX. STRENGTH OF EVIDENCE

Strength of Evidence on Liability and Statutory Aggravation

117. What was the evidentiary basis of the state's case with respect to:

- A. Liability for First Degree Murder VN436 _____
- B. A finding of the presence of one or more statutory aggravating circumstances (if multiple aggravators in the case, code for the one with the strongest evidence) VN437 _____

Type of evidence code (Enter only a single code for each variable. IF more than one applies, enter the strongest in terms of evidentiary strength.):

a. Examples when the evidence is overwhelming – the test for which is a probability of a conviction or a finding of aggravation greater than approximately .85.

- 1 = Full confession to law enforcement authorities as to all elements of capital murder with:
- (1) eyewitness(es) testimony, and/or
 - (2) substantial forensic or physical evidence, and/or
 - (3) circumstantial evidence.
- 2 = Declaration against penal interest of defendant as to all elements of capital murder with:
- (1) eyewitness(es) testimony, and/or
 - (2) substantial forensic or physical evidence, and/or
 - (3) circumstantial evidence.
- 3 = A qualified confession or declaration against penal interest of defendant (i.e., denying on some element of capital murder) with:
- (1) eyewitness(es) testimony, and/or
 - (2) substantial forensic or physical evidence, and/or
 - (3) substantial circumstantial evidence.
- 4 = Eyewitness(es) without credibility problems with:
- (1) substantial forensic or physical evidence, and/or
 - (2) substantial circumstantial evidence.
- 5 = Eyewitness(es) with credibility problems but with:
- (1) overwhelming forensic or physical evidence, and/or
 - (2) overwhelming circumstantial evidence.
- 6 = Overwhelming forensic and/or physical evidence with substantial circumstantial evidence.
- 7 = Other (specify) _____

b. Examples of a clearly defensible case– the test for which is a probability of a conviction or a finding of aggravation that is less than approximately .85.

- 8 = Qualified confession with little direct evidence or weak circumstantial evidence.
- 9 = Declaration against penal interest of defendant, denied or qualified, but circumstantial evidence on the point at issue.
- 10 = Eyewitness(es) or confession or declaration against penal interest of defendant as to own conduct but defendant denies mens rea.

11 = The only evidence of defendant's own conduct is testimony of coperpetrator(s) and defendant denies own conduct.

12 = Single eyewitness with prior knowledge of defendant.

13 = Other (specify) _____

c **Examples of a clearly insufficient case – the test for which is a probability of conviction or a finding of aggravation that is less than .50.**

14 = Witness(es) can place defendant at scene of crime but weak evidence on mens rea.

15 = Witness(es) places defendant and coperpetrator(s) at crime scene, but the identity of the killer is unknown.

16 = Other (specify) _____

118. EVIDENCE AGAINST THE DEFENDANT

Code items below that are expressly stated or strongly suggested in the file. If more than eight foils apply, code the eight that are most incriminating.

Evidence against the defendant (Check all that apply):

- | | |
|--|-------------|
| 1 = Pretrial identification of defendant occurred | VN438 _____ |
| 2 = Defendant identified by someone who knew him or her | VN439 _____ |
| 3 = Defendant identified by a police officer. | VN440 _____ |
| 4 = Defendant identified by two or more witnesses | |
| 5 = Defendant confessed to murder | VN441 _____ |
| 6 = Defendant made incriminating statements | |
| 7 = Co-perpetrator implicated or testified against defendant | VN555 _____ |
| 8 = Weapon found linking defendant to murder | |
| 9 = Scientific evidence linking defendant to murder (e.g. DNA, or fingerprint evid.) | VN556 _____ |
| 10 = Physical evidence linking defendant to murder | |
| 11 = Testimony of primary witness was corroborated | VN557 _____ |
| 12 = Defendant had a motive to commit murder | |
| 13 = Dying declaration of victim | VN558 _____ |
| 14 = Defendant took out insurance policy on deceased victim | |
| 15 = None of the above | |
| 16 = Other evidence against the defendant (specify) _____ | |

88 = None of the above

99 - Evidence unknown

X. STATUTORY AGGRAVATING CIRCUMSTANCES

119. Answer these questions in all cases.

Column A

(Where Penalty Trial was held).

- 1 = Statutory factor presented and found by fact-finder
- 2 = Statutory factor presented at penalty hearing but not found by fact-finder
- 3 = Unknown whether the factor was presented at penalty hearing
- 4 = Facts support a finding of factor (Evidence = 1 or 2 – see below), but factor not presented
- 5 = Factor presented and verdict reached, but unknown if found
- 6 = Unknown if present
- 7 = Unknown if a penalty trial was held
- Blank = Factor not present

(Where Penalty Trial was not held)

- 8 = Facts support a finding of the factor.
- 9 = Unknown if factor was present
- Blank = Not applicable because no indication factor was present

Column B (Evidence) (Answer for all cases).

- 1 = Strong - Elements clearly made out and no issue as to reliability of evidence.
- 2 = Legally sufficient - Facts are legally sufficient to establish the aggravating factor, but a reasonable fact-finder, in exercise of discretion, could find the circumstance either present or not present in the case; and no issue of reliability of evidence.
- 3 = Sufficient, with evidentiary issue(s) - Facts are legally sufficient to establish the aggravating factor, but such a finding rests on acceptance of evidence that is controverted or of questionable reliability.
- 4 = Insufficient - Some evidence of the aggravating factor, but even if accepted, it would not survive a sufficiency challenge.

Blank = Not applicable because no indication that the factor was present.

	<u>Col. A. (Procedure</u>	<u>Col. B. (Evid.</u>
A. The Defendant was previously convicted of another murder or a crime involving the use or threat of violence to the person [Neb. Rev. Stat. § 29-2523(1)(a)];	X49 _____	X61 _____
B. The Defendant had a substantial history of serious assaultive or terrorizing criminal activity [Neb. Rev. Stat. § 29-2523(1)(a)]	X50 _____	X62 _____
C. The murder was committed with an apparent effort to conceal the commission of a crime or the identity of the perpetrator of a crime [Neb. Rev. Stat. § 29-2523(1)(b)]	X51 _____	X63 _____
D. The murder was committed for hire, or for pecuniary gain or the Defendant hired another to commit the murder for the Defendant [Neb. Rev. Stat. § 29-2523(1)(c)]	X53 _____	X65 _____
E. The murder was especially heinous, atrocious, cruel, or manifested exceptional depravity by ordinary standards of morality and intelligence [Neb. Rev. Stat. § 29-2523(1)(d)]	X55 _____	X67 _____

	<u>Col. A. (Procedure</u>	<u>Col. B. (Evid.</u>
F. At the time the murder was committed, the Defendant also committed another murder [Neb. Rev. Stat. § 29-2523(1)(e)]	X56_____	X68_____
G. The Defendant knowingly created a great risk of death to at least several persons [Neb. Rev. Stat. § 29-2523(1)(f)]	X57_____	X69_____
H. The victim was a law enforcement officer or a public servant having the custody of the Defendant or another [Neb. Rev. Stat. § 29-2523(1)(g). Victim's title: _____] ..	X58_____	X70_____
I. The Defendant committed the crime to disrupt or hinder the lawful exercise of any governmental function or the enforcement of the laws [Neb. Rev. Stat. § 29-2523(1)(h)]	X59_____	X71_____
J. Victim was a law enforcement officer engaged in the lawful performance of his or her official duties as a law enforcement officer and the offender knew or reasonably should have known that the victim was a law enforcement officer. (ONLY for homicides committed AFTER JULY 15, 1998) [Neb. Rev. Stat. § 29-2523(1)(i)]	X60_____	X72_____

XI. MITIGATING CIRCUMSTANCES

A. MITIGATING CIRCUMSTANCES-STATUTORY

120. Code for all cases

Column A

- 1 = Presented and found
- 2 = Presented and not found
- 3 = Presented but not reached because no aggravating circumstance found
- 4 = Unknown if presented, but penalty hearing held, and court held that factor did not exist
- 5 = Unknown if presented, but penalty hearing held, and court held that factor did exist
- 6 = No penalty trial held
- 8 = Presented, but unknown if factor found
- 9 = Unknown if a penalty trial held
- Blank = No indication factor was presented

Column B (Strength of evidence)

- 1 = Strong - Strong evidence of the presence of the factor.
- 2 = Sufficient - Sufficient evidence for fact-finder to find factor by the preponderance of the evidence.
- 3 = Questionable - Some indication of factor but either derives from questionable source or is of questionable relevance or validity as mitigating factor; judge's failure to charge on factor would likely be upheld.
- Blank = No indication the factor may be present

	<u>Col. A (Procedure)</u>	<u>Col. B (Eviden</u>
A. The Defendant has no significant history of prior criminal activity [Neb. Rev. Stat. § 29-2523(2)(a)]	X73_____	V96_____
B. The Defendant acted under unusual pressures or influences or under the domination of another person [Neb. Rev. Stat. § 29-2523(2)(b)]	X74_____	V97_____
C. The Defendant committed the crime while the Defendant was under the influence of extreme mental or emotional disturbance [Neb. Rev. Stat. § 29-2523(2)(c)]. ...	X75_____	V98_____
D. The age of the defendant at the time of the crime [Neb. Rev. Stat. § 29-2523(2)(d)]	X76_____	V99_____
E. The offender was an accomplice in the crime committed by another person and his participation was relatively minor [Neb. Rev. Stat. § 29-2523(2)(e)].	X77_____	V100_____
F. The victim was a participant in the Defendant's conduct or consented to the act [Neb. Rev. Stat. § 29-2523(2)(f)].	X78_____	V101_____
G. At the time of the crime, the capacity of the Defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was impaired as a result of mental illness, mental defect or intoxication [Neb. Rev. Stat. § 29-2523(2)(g)].	X79_____	V102_____
H. Non-Statutory Mitigation	X73A_____	

Supplemental Coding for Non-Statutory Mitigation (Item H):

- 5 = Court indicates that evidence of non-statutory mitigation was presented and considered
- 6 = Court indicates that NO evidence of non-statutory mitigation was presented
- 9 = unknown whether non-statutory mitigation was presented

B. PROCEDURAL AND SUBSTANTIVE DETAIL ON MITIGATION

A. Witnesses (CODE ONLY FOR PENALTY TRIAL CASES)

1. Testimony	A	B
	Witness/Evidence Type	Number of Witnesses
	VN492 _____	VN497 _____
	VN493 _____	VN498 _____
	VN494 _____	VN499 _____
	VN495 _____	VN500 _____
	VN496 _____	VN501 _____

Testimony Codes

1 = family and friends	5 = investigator/mitigation specialists
2 = well established acquaintances	6 = mental health witnesses
3 = employer, co-workers	7 = Letters in favor of Defendant
4 = clergy(specify) _____	8 = other _____

B. Mitigation Detail. Code for all cases using the Mitigation Detail Codebook

Code the mitigation detail in the following variables. Treat a factor as present if only it is expressly stated or clearly suggested by the file.

Detail in Statutory Mitigation:

(If more than 5, Code the 5 most mitigating)

VN503 _____

VN504 _____

VN506 _____

VN507 _____

VN508 _____

Detail in Non-Statutory Mitigation:

(If more than 10, Code the 10 most mitigating)

VN509 _____

VN510 _____

VN511 _____

VN512 _____

VN513 _____

VN514 _____

VN515 _____

VN516 _____

VN517 _____

VN518 _____

XII. ARNOLD BARNETT'S THREE-DIMENSIONAL MEASURE OF CASE CULPABILITY

I. THE CERTAINTY THE DEFENDANT IS A DELIBERATE KILLER

(Enter up to three. If more than three enter three strongest.)

V599 _____ | _____ V600 _____ | _____ V601 _____ | _____

- 01 = The narrative indicates the evidence in the case seemed weak, (e.g., "case based solely on circumstantial evidence").
- 02 = The narrative mentions evidence that worked *against* the view that the defendant was guilty (e.g., tests for residue on the defendant's hand from firing a gun were negative).
- 03 = It seems clear that the defendant neither ordered the killing nor was the triggerman. (Note that (3) *differs* from the weaker statement that it is uncertain whether the defendant was the triggerman.)
- 04 = The killing has an "accidental" touch about it, because(a) a fairly long period (perhaps a week or more) elapsed between the incident and the victim's death, or (b) the death was caused by a shot fired somewhat randomly (e.g., through a door), or (c) the death was caused by a beating similar to previous beatings of the victim by the defendant.
- 05 = There is reason to doubt that the defendant's actions *in themselves* would have caused the victim's death (e.g., (i) the defendant beat the victim, but it was a coperpetrator's stabbing that killed him, or (ii) the defendant's beating of the victim induced a heart seizure).
- 06 = The defendant was one of several participants in a conspiracy to kill, but took no part in the actual killing.
- 07 = The narrative mentions that the defendant was previously treated for mental problems (e.g., institutionalized), Neglect references to insanity if the defendant has no apparent medical history.
- 08 = The killing was a murder-for-hire, and the defendant was either the sole instigator or the executioner.
- 09 = The defendant plotted to kill the victim (e.g., a wife and her lover arrange to murder her husband). Do not code if the defendant was one of several plotters, and clearly not the actual killer.
- 10 = The narrative mentions that the defendant was officially implicated in other killings.
- 11 = The narrative mentions that the defendant had tried previously to kill the victim.
- 12 = The defendant announced *in advance* to a third party an intention to kill the victim. (Neglect this condition in a lovers' triangle or lovers' quarrel case, or when the third party was a coperpetrator.)
- 98 = None of the above is applicable
- 99 = Unable to classify

II. THE STATUS OF THE VICTIM

V602 _____

- 1 = The victim was a relative of the defendant (even his or her child).
- 2 = The victim was a friend of the defendant. (Interpret the word "friend" loosely; if, for example, two people of similar age are riding together voluntarily in a car, consider them friends. However, the mere fact that two people know each other is not sufficient. Neighbors of vastly different ages, or the bank teller and the depositor, are not assumed friends barring other evidence of social ties.)
- 3 = The victim was an enemy of the defendant, though not the defendant's employer. (Interpret the word "enemy" loosely; if, for instance, the victim and defendant vied for the affections of the same woman, if the victim had harassed one of the defendant's loved ones, if there was a feud of some sort that turned violent, assume enmity existed. If, however, the victim could be viewed as the defendant's employer - whether as (say) his supervisor in a factory or the person who hired him to perform some chores - do not give a score of 0 under (3).)
- 4 = The victim, although a stranger to the defendant, acted in a highly provocative manner just prior to the killing (e.g., racial taunts).
- 5 = The victim was engaged in an illegal or often-disapproved activity at the time of the killing (e.g., a drug dealer, a prostitute or prostitute's customer, owner of a homosexual bathhouse, etc.).
- 8 = None of the above is applicable
- 9 = Unable to classify

III. THE HEINOUSNESS OF THE MURDER

There are two aspects to this dimension: whether self-defense motivated the killing and how "gruesome" it was.

A - Self-defense is an element in the case under any of the following circumstances:

V603 _____

- 1 = The victim had *at hand* a deadly weapon at the time of the killing. (Merely having a gun in the store or house is not sufficient)
- 2 = The victim was killed with his own weapon. (This is taken to imply (1) is satisfied even if the narrative does not explicitly say so.)

NOTE: If the victim was a police officer, do not code self-defense (1) or (2) unless the officer fired shots before the defendant did.

- 3 = The victim had threatened to kill the defendant or one of the defendant's loved ones.
- 4 = The victim had attacked the defendant at the time of the killing.
- 0 or 8 = None of the above is applicable
- 9 = Unable to classify

B - A homicide is classified as vile if one of the following circumstances is present:

V604 _____ | _____

- 1 = It was accompanied by rape or sexual abuse, either against the victim or someone in the company of the victim.
- 2 = There were at least two homicide victims.
- 3 = The deceased was a kidnapping victim at the time he was slain.
- 4 = Psychological torture preceded the killing (e.g., Russian roulette, a sustained period of terror).
- 5 = The victim was shot several times in the head at close range.
- 6 = The killing was execution style (i.e., victim forced to kneel or squat, then shot in head).
- 7 = The death was caused by strangulation or arson.
- 8 = The death was caused by a drowning in which physical force kept the victim below water.
- 9 = The killing involved ten (10) or more shots or stab wounds, except when the murder weapon was a penknife or other small cutting instrument.
- 10 = The physical details of the killing are unusually repulsive (e.g., the victim drowned in his own blood).
- 11 = The body was mutilated or otherwise grossly disfigured (except in an attempt to conceal the homicide).
- 12 = The killing was performed with a bizarre weapon (e.g., a hacksaw, a claw hammer, an icepick).
- 13 = The defendant apparently derived pleasure from the very act of killing. (This is distinct from believing the victim deserved to die, and taking pleasure on that account.)
- 14 = The crime was specifically described in the narrative as extremely bloody.
- 98 = None of the above is applicable
- 99 = Unable to classify

Absent *all* these circumstances, the homicide is categorized as not vile. Despite the length of the list above, most "simple" shootings, stabbings, and beatings would not be classified as vile under these rules.

XIII SALIENT FACTORS

(Measure No. 1)

HOMICIDE CASE TYPOLOGY BASED ON STATUTORY AGGRAVATING CIRCUMSTANCES AND OTHER AGGRAVATING AND MITIGATING CIRCUMSTANCES

Coder Note: Enter one choice only. If more than one category applies, code the most aggravated category, with category A being the most aggravated and category K being the least aggravated category. If the subsections (1, 2, 3, etc.) under a given category (A, B, C, etc.) does not apply, code only the category letter and leave the number for the subsection blank. Violence/terror involves defendant conduct such as gunshot wounds or mutilation unnecessary to kill the victim and intended to cause extreme physical or psychological suffering.

VN605 |
 Letter No.

- A. **PRIOR HOMICIDE** - Murder by a defendant with a prior murder or manslaughter – 1(a):
- 1 = With one or more additional statutory aggravating circumstance or particular violence/terror.
- 2 = With no additional aggravating circumstance and without particular violence/terror.
- B. **POLICE VICTIM** - Victim was a law officer killed in the line of duty and defendant knew or should have reasonably known that the victim was a law officer. – 1(i):
- 1 = With one or more additional statutory aggravating circumstances or particular violence/terror.
- 2 = With no other statutory aggravating circumstance or particular violence/terror.
- C. **JAILER VICTIM** - The victim was a law enforcement officer or public servant having the custody of the defendant or another – 1(g):
- 1 = With one or more additional statutory aggravating circumstances or particular violence/terror.
- 2 = With no additional aggravating circumstance and without particular violence/terror.
- D. **MULTIPLE VICTIMS** - Multiple-Victim Murder – 1(e):
- (Coders: Please note that the counts of mitigating circumstances under this factor are different than the counts of mitigating circumstances under Salient Factor #2)
- 1 = Multiple victim murders involving sexual assault or particular violence/terror.
- 2 = Other multiple-victim cases with fewer than two statutory mitigating circumstances.
- 3 = Multiple-victim cases with two or more statutory mitigating circumstances, e.g., psychiatric problem or victim provocation.
- E. **VIOLENT RECORD** - Murder by a defendant with substantial history of serious assaultive or terrorizing criminal activity or a prior conviction of a crime involving the use of a threat of violence to the person. – 1(a):
- 1 = With two or more additional aggravating circumstances or particular violence/terror.

2 = With a single additional aggravating circumstance and without particular violence/terror.

F. **CONTRACT KILLING - Murder for hire - 1(c):**

1 = A contract killing with defendant the killer.

2 = A contract killing with defendant the principal.

3 = Defendant participated in planning or killing but was not the principal architect or actor.

G. **ESCAPE DETECTION - A murder committed in which the defendant's motive was an apparent effort to conceal either the commission of a crime or the identity of the perpetrator of a crime. - 1(b)**

1 = Murder committed to silence a potential witness to an earlier offense.

2 = Murder committed in retaliation against informant whose information led to defendant's arrest.

3 = Defendant killed victim because of status as witness or informant (i.e., burglar caught in the act by homeowner; robbery victim killed with no other precipitating event).

4 = Escape detection with one or more statutory aggravating circumstances or particular violence or terror.

H. **HAC - Murder was especially heinous, atrocious, and cruel (HAC) -1(d):**

1 = Victim was raped and subjected to significant sexual abuse other than penetration

2 = Victim was raped, and the victim was aged or very young

3 = Method of killing, or circumstances of killing indicate that victim was tortured, or the defendant imposed extreme suffering out of a sadistic motivation

4 = Extreme unnecessary multiple wounding of different body parts and/or with multiple weapons with clear intent to cause considerable physical pain.

5 = Extreme unnecessary multiple wounding with a single weapon with clear intent to cause considerable pain.

6 = Defendant's method of killing, or the length of time involved in the killing clearly indicates that defendant had Intent to cause serious mental, emotional, or physical pain

- I. **DEPRAVITY** - Defendant manifested exceptional depravity by ordinary standards of morality and intelligence - 1(d):
- 1 = There is substantial evidence that the Defendant intentionally selected the victim on the basis of an identity characteristic (e.g. race, age, sexual orientation, religion, gender)
 - 2 = There is substantial evidence that the Defendant experimented with the method of killing prior to the murder
 - 3 = The Defendant engaged in extended or non-trivial preparation for murder involving a non-trivial amount of time and effort
 - 4 = The Defendant relished the murder or the death of the victim
 - 5 = The murder included the use of substantially more violence than necessary to cause death)
 - 6 = The Defendant needlessly mutilated the victim's body, either before or after death
 - 7 = The victim was murdered while wholly unable to resist the Defendant's actions
 - 8 = The sentencing authority, applied the factors stated in *State v. Palmer* (1986) in a penalty trial and held that the crime was "senseless."
- J. **GRAVE RISK** - A murder in which the defendant knowingly created a gave risk of death to at least two persons - 1(f):
- 1 = Defendant attempted to kill or cause serious bodily injury to two or more persons.
 - 2 = Defendant randomly fired multiple shots into a crowd with no particular victim in mind.
 - 3 = Defendant's intentional attack on his or her victim knowingly created a great risk of death to two or more persons within the zone of danger to whom defendant was otherwise indifferent.
 - 4 = After killing or mortally wounding the victim, defendant intended to injure or terrify two or more persons and employed force in a manner which created a grave risk of death.
- K. **HINDER GOVERNMENT FUNCTION** - The defendant committed the crime to disrupt or hinder the lawful exercise of any governmental function or the enforcement of the laws. - 1(h)
- 1 = With two or more additional aggravating circumstances or particular violence/terror.
 - 2 = With a single additional aggravating circumstance.
 - 3 = With no other aggravating circumstances or particular violence
- L. **OTHER** - Other category not covered above (specify) _____
-

SALIENT FACTORS

Measure No. 2

HOMICIDE CASE TYPOLOGY BASED ON STATUTORY AGGRAVATING AND MITIGATING CIRCUMSTANCES:

VN606 _____ | _____
Letter No.

Coder Note: Enter one choice only. If more than one category applies, code the most aggravated category, with category A being the most aggravated and category J being the least aggravated category.

A low mitigation case refers to one with two or fewer statutory mitigating circumstances (a) found (or recognized with respect to the catchall factor) in penalty trial cases or (b) present in non-penalty trial cases. However, catchall factors account for only one mitigator regardless of their number. A high mitigation case refers to one with three or more mitigating circumstances found (or recognized with respect to the catchall factor in penalty trials) or present in non-penalty trial cases (with catchall factors counting as only one mitigator regardless of their number).

- A. **PRIOR HOMICIDE -** Murder by a defendant with a prior murder or manslaughter conviction - 1(a):
1. Aggravated¹ Low Mitigation
 2. Aggravated¹ High Mitigation
 3. Other Low Mitigation
 4. Other High Mitigation
- B. **POLICE VICTIM -** Victim was a law officer killed in the line of duty and defendant knew or should reasonable have known that the victim was a law officer - 1(i):
1. Low Mitigation
 2. High Mitigation
- C. **JAILER VICTIM -** The victim was a law enforcement officer or public servant having the custody of the defendant or another - 1(g):
1. Low Mitigation
 2. High Mitigation
- D. **MULTIPLE VICTIMS -** Multiple-victim murder - 1(e):
1. Aggravated² Low Mitigation
 2. Aggravated² High Mitigation
 3. Other Low Mitigation
 4. Other High Mitigation

¹Aggravated refers to the presence of an additional statutory aggravating circumstance.

²An aggravated multiple victim case involves a contemporaneous felony (e.g., robbery, kidnapping) other than a drug crime, or an additional statutory aggravating circumstance.

- E. **VIOLENT RECORD** - Murder by a defendant with a substantial history of serious assaultive or terrorizing criminal activity or with a prior conviction of a crime involving the use of a threat of violence to the person. - 1(a):
1. Aggravated¹ Low Mitigation
 2. Aggravated¹ High Mitigation
 3. Other Low Mitigation
 4. Other High Mitigation
- F. **CONTRACT KILLING** - Murder for hire by a principal or agent (shooter). - 1(c):
1. Aggravated¹ Low Mitigation
 2. Aggravated¹ High Mitigation
 3. Other Low Mitigation
 4. Other High Mitigation
- G. **ESCAPE DETECTION** - A murder committed in which the defendant's motive was an apparent effort to conceal either the commission of a crime or the identity of the perpetrator of a crime - 1(b)
1. Aggravated¹ Low Mitigation
 2. Aggravated¹ High Mitigation
 3. Other Low Mitigation
 4. Other High Mitigation
- H. **HAC OR DEPRAVITY** - Murder was especially heinous, atrocious, and cruel (HAC) or defendant manifested exceptional depravity by ordinary standards of morality and intelligence - 1(d):
1. Low Mitigation
 2. High Mitigation
- I. **GRAVE RISK** - A murder in which the defendant knowingly created a grave risk of death to at least two or more persons - 1(f):
1. Low Mitigation
 2. High Mitigation
- J. **HINDER GOVERNMENT FUNCTION** - The defendant committed the crime to disrupt or hinder the lawful exercise of any governmental function or the enforcement of the laws - 1 (h):
1. Low Mitigation
 2. High Mitigation
- K. **OTHER** - Other category not covered above. (specify) _____
-

CODER'S NOTES

Note below all questions involving interpretation issues not covered in the coding manual that you believe require further consideration by the research director. Indicate the page and question number for each entry.

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

(Append additional pages as needed)

NEBRASKA CRIMINAL HOMICIDE REVIEW STUDY

D.C.I. MITIGATION CODE APPENDIX

June 26, 2000

**MITIGATION CODEBOOK
SUBSTANTIVE DETAIL**

The following detail codes are to be used when completing Section XII of the DCI.

A. Substantive detail on statutory mitigating circumstances 2(a) through 2(g).

1. No Significant Criminal History -2(a):

- 10=no previous arrests or convictions
- 11=minor criminal record
- 12=defendant has only one or two nonviolent misdemeanors
- 13=defendant has only up to four misdemeanor and/or two or fewer nonviolent felonies
- 14=defendant lived over 10 years with no significant prior criminal history
- 15=other (specify) _____

2. Defendant Acted Under Unusual Pressures or Influenced as Under the Domination of Another Person. -2(b):

- 20=feared for his own life at hands of co-defendant
- 21=under influence of a lover
- 22=other (specify) _____

3. Defendant was Under The Influence of Extreme Mental or Emotional Disturbance -2(c):

a. Acted in Rage

- 30=passionate reasons for the murder (not cold calculation)
- 31=committed crime during a heated argument
- 32=during a domestic quarrel
- 33=intent to kill was formed during an argument with the victim
- 34=acted in emotional rage
- 35=other(specify)_____

b. Acted in Perceived Self-Defense

- 36=defendant was defending himself
- 37=may have perceived it necessary to protect her family
- 38=other(specify)_____

c. Acted under Stress

- 39=depressed
- 40=difficulty in dealing with stress conditions
- 41 =substantial psychological stress not created by the Defendant's wrongful act
- 42=emotional stress and considered suicide after murder
- 43=given to appalling errors of bad judgment when under stress
- 44=under emotional strain of the mistreatment of a victim and greatly influenced by the victim
- 45=other(specify)_____

4. Defendant's Age -2(d):

- 50=defendant is under 18
- 51=defendant is 18, 19, or 20
- 52=defendant is over 55

53=defendant of over 65

54=other (specify) _____

5. Defendant Was an Accomplice to the Crime Committed by Another and His Participation Was Relatively Minor - 2(e):

60=passive role in the crime

61=relative involvement minor

62=disputed who was the triggerman

63=defendant was not the instigator of the crime

64=other (specify) _____

6. The Victim Participated in the defendant' conduct or Consented to the Homicidal Act - -2(f):

70=yes

7. At the Time of the Offense, Defendant had a Substantially Impaired Capacity to Appreciate the Criminality of His Conduct or Conform His Conduct to the Requirements of the Law. -2(g):

a. Impaired Mental Capacity

80=suffers from mild dementia

81=sporadic hallucinations

82=suffers from psychotic depression

83=became mentally ill as a young adult and was a paranoid schizophrenic at time of the killing

84=suffers from psychotic depression and feelings of rage against himself because of strong pedophilic urges

85=suffer post traumatic stress disorder from service in Vietnam

86=sense of self distorted by bizarre thoughts

87=violent destructive fantasy games impaired his ability to deal with reality

88=belief in reincarnation and that he would join victim in another life in the future

89=other (specify) _____

b. Impaired Intellectual Capacity

90=low IQ

91=mildly retarded

92=marginal intelligence

93=brain damaged

94=borderline retarded

95=grade school grade intelligence

96=unable to reason abstractly

97=memory problems

98=other (specify) _____

c. Under the Influences of Controlled Substance During the Offense

99=claimed was intoxicated during the crime

100=under the influence of drugs at the time of the crime

101=drinking the night/day the homicide was committed

102=other (specify) _____

d. Personality Disorder

103=mental and emotional handicap

104=when provoked delusional system sets in

105=emotional cripple

106=emotional maturity of a thirteen year old

107=mental age of thirteen

108=feeling of being persecuted, exploited resulting in mistrust

109=impulsive person

110=suffers attention deficit disorder

111=hyperactive

112=dependant personality

113=follower rather than a leader

114=other (specify) _____

e. Sexual Disorder

115=sexual sadism

116=psychosexual disorder (rapist)

117=other (specify) _____

f. Social Disorder

118=significantly impaired social judgment

119=sociopath

120=antisocial personality disorder

121=primitive moral judgment of a child

122=other (specify) _____

D. Substantive Detail on Catchall Mitigating Circumstances

1. MITIGATING CIRCUMSTANCES RELATING TO THE CRIME, ARREST, OR TRIAL

a. Mens rea/Mental state

300=no long term planning of the murder

301=showed remorse for the crime

302=took responsibility for the offense

303=surrendered within 24 hours

304=surrendered more than 24 hours of the homicides

305=cooperated with authorities (e.g. testified for prosecutors)

306=other (specify) _____

b. Circumstances of the Victim

307=treatment of the victim during the crime, e.g. acted to aid victim after attack

308=victim was a drug dealer

309=victim had raped his girlfriend/wife

310=victim aroused the defendant's fear for life

311=was armed with a deadly weapon

312=and defendant had history of bad blood

313=accused defendant of misconduct

314=physically injured the defendant at the time of the homicide
315=physically assaulted the defendant at the time of the homicide
316=verbally threatened the defendant at the time of the homicide
317=verbally abused defendant at the time of the homicide
318=physically injured defendant on earlier occasion
319=physically assaulted defendant on earlier occasion
320=verbally threatened defendant on an earlier occasion
321=verbally abused defendant on an earlier occasion
322=other victim provocation
323=had a bad criminal reputation
324=showed or talked about large amounts of money
325=was a fugitive at the time of the homicide
326=had a criminal record
327= physically injured a person the defendant cared about at the time of the homicide
328=physically assaulted a person the defendant cared about at the time of the homicide
329=verbally threatened a person the defendant cared about at the time of the homicide
330=verbally abused a person the defendant cared about at the time of the homicide
331=physically injured a person the defendant cared about on an earlier occasion
332=physically assaulted a person the defendant cared about on an earlier occasion
333=verbally threatened a person the defendant cared about on an earlier occasion
334=verbally abused a person the defendant cared about on an earlier occasion
335=victim's family against using the death penalty
336=other (specify) _____

c. Personal Relationship Between the Victim and Defendant

337=dispute between victim and defendant over money or property
338=dispute while under the influence of drugs or alcohol
339=dispute between spouses or ex-spouses
340=lover or ex-lover's quarrel
341=lover's triangle
342=other disputes and fights where it is unknown who provoked the altercations
343=upset by break up with the victim (ex-girlfriend)
344=married to the victim and they were best friends
345=bought drinks for victim and friend in a generous manner
346=other (specify) _____

d. Circumstances of the Arrest

347=did not flee crime scene
348=waived Miranda rights
349=other (specify) _____

e. Circumstances of the Conviction

350=defendant confessed to the crime
351=aggravator in the case was a conviction from 20 years ago
352=credibility problems of co-defendant
353=good behavior at the trial

f. Treatment of Co-Perpetrators

354=accomplice(s) with comparable culpability received less severe treatment
355=other matter concerning crime/arrest/trial _____
356=other matter concerning crime/arrest/trial _____

2. CONTRIBUTION TO SOCIETY

a. Family

400=Defendant is a parent, e.g.,

1. mother of children
2. sole care of two children
3. the affect of her execution on her children

401=Defendant is a good parent, e.g.,

1. good father and provider
2. regularly visited his 18 month old child
3. positive adult relationship with his two children

402=Defendant is a provider for his or her family, e.g.,

1. paid child support when he could
2. involved and supported school and sports activities of his child
3. cared enough for his daughter that he let her be adopted by his Air Force buddy

403=Defendant is a good spouse, e.g.,

1. good husband
2. fifty years marriage and supported his wife

404=Defendant is a good child, e.g.,

1. good son
2. provided for his mother

405=Defendant loves his or her family, e.g.,

1. family man
2. affectionate and considerate to family
3. continued contact and concern for his family
4. loving relationship with mother and retarded brother
5. moved to tears when learned that his mother was infected with a serious disease

406=Defendant has family who loves him or her, e.g.,

1. family visits him in prison

407=Defendant provides support for children in extended family, e.g.,

1. father figure to his siblings
2. cared for his sister's children, including a handicap child
3. took care of ex-wife's mentally retarded child
4. encouraged younger brother to avoid his mistakes
5. counseled nieces and nephews against following criminal example

b. Occupational History

408=Employed, e.g.,

1. gainfully employed
2. professional athlete

409=Good employee, e.g.,

1. hard worker
2. diligent and conscientious employee
3. exemplary employment record
4. good and responsible worker

410=Finished high school education, e.g.,

1. high school diploma
2. good student
3. obtained GED

411=College education, e.g.,

1. college trained
2. master's degree
3. overcame difficult childhood to graduate from high school and obtained an athletic scholarship

412=Military service, e.g.,

1. served in the Air Force
2. served his country in the Army
3. honorably discharged from the Navy
4. honorable discharge from the Coast Guard

413=Served in military during war, e.g.,

1. wounded and honorably discharged from the Vietnam war
2. served country in Vietnam war and was honorably discharged
3. highly decorated Green Beret in Vietnam war
4. purple heart World War II

c. Community

500=Saved lives, e.g.,

1. once saved the life of a child
2. saved a woman from drowning
3. saved two people from drowning in high school
4. saved sister from drowning
5. rescued child in a pool
6. previously saved lives while assisting paramedics

501=Community awards and honors, e.g.,

1. Eagle Scout
2. received an award from the sheriff's office
3. captain of the track team and won honors as a runner

502=Service to community, e.g.,

1. assisted in the apprehension of a robber when 17 years old
2. assisted taxpayers in accounting business
3. sports activities during high school
4. served as a male nurse for a terminally ill father of two children and was a positive role model for the children and a pillar of strength for the wife of the patient

506=Civic leader, e.g.,

1. described by mayor as a civic leader

507=Volunteer work, e.g.,

1. did volunteer work
2. worked in the Salvation Army because of a desire to serve his fellow man

508=Charitable and humanitarian deeds, e.g.,

1. brought friends and strangers home for meals
2. good relationship with neighbors and assisted them when they were in need
3. forgave a man who shot him

509=Good deeds towards children, e.g.,

1. came to the aid of a child
2. role model for children
3. babysitter
4. played Santa Claus
5. enjoys playing with children
6. delightful young man who is good with children

510=Exhibited kindness to others, e.g.,

1. capable of kindness
2. capacity to form loving relationships
3. helpful to friends
4. respects and treats kindly elders
5. demonstrated concern for others and unselfishness
6. friendly, helpful, good with animals and children
7. exhibited kindness toward weak, crippled, or helpless persons and animals

511=other contribution to society_____

3. OTHER GOOD CHARACTER TRAITS

a. General Good Characteristics

600=Defendant leads a stable life, e.g.,

1. generally stable life
2. lead an exemplary life
3. has never used alcohol or drugs
4. good reputation in the community
5. had in the past refrained from committing other crimes despite the opportunity

601=Defendant possesses good character traits, e.g.,

1. good character (from testimony from family members)
2. good manners
3. sense of humor
4. good listener
5. friendly, outgoing and sense of humor
6. is a patient and humble man

602=Non-violent, e.g.,

1. not known to be a violent person
2. prior to the killing had never fired a gun at anyone
3. no history of violent acts
4. crime out of character with the defendant

b. Positive Relationships With Authorities

603=Cooperated with police, e.g.,

1. assisted police in prosecuting a jailhouse rape
2. turned himself in for a previous murder

604=Cooperated with prosecutors, e.g.,

1. provided testimony in another trial

605=Good behavior while in prison, e.g.,

1. good prison record
2. model prisoner
3. prior record as a model prisoner

606=Improved in prison, e.g.,

1. changed for the better in prison

607=Aided others in prison, e.g.,

1. educational aid to other prisoners
2. arbitrator in prison disputes
3. helped another inmate make a phone call

608=Prevented escape during previous incarceration

609=Prior sentence in different case was reduced

c. Defendant Had a Good Upbringing/Abilities

610=Raised in good home, e.g.,

1. came from a good home

611=Religious background, e.g.,

1. attended church regularly as a child

612=Displayed good qualities as a child, e.g.,

1. considerate son while a teenager in school
2. kind, considerate, thoughtful, and playful as a child

613=Artistic ability, e.g.,

1. poetic talents
2. talent for singing
3. writing ability

614=Intelligence, e.g.,

1. smart
2. above average intelligence

d. Religious

615=Strong spiritual and religious beliefs, e.g.,

1. believes in God

616=Devout in his or her faith, e.g.,

1. dedication to religious principles
2. involved in church/synagogue/mosque activities
3. regularly attended church/synagogue/mosque
4. participated in weekly bible meetings
5. deacon in his church/synagogue/mosque

617=Strong spiritual and religious beliefs, e.g.,

1. dedication to Jewish/Muslim/Christian principles
2. involved in synagogue/mosque/church activities
3. regularly attended church, etc.

4. participated in weekly bible meetings
5. deacon in his church, etc.

618=Spiritual conversion, e.g.,

1. became born again Christian after his arrest
2. shown spiritual growth

e. Self-Help Activities

619=Participated in self-help programs

620=Self-help for drug addiction, e.g.,

1. participated in drug rehabilitation programs
2. overcame drug addiction
3. attempted to cure addictions
4. seen psychologist concerning drug abuse and emotional problems

621=Education improvement, e.g.,

1. studied while in prison

622=Attempted to change or improve life, e.g.,

1. showed signs of getting his life in order
2. attempted to find employment but was hampered by lack of education and learning disability

f. Defendant's Rehabilitation Potential

623=Potential to contribute to society

624=Potential to contribute to prison life, e.g.,

1. skilled worker and will make contribution in prison life
2. unlikely to be a danger to others while serving time
3. can function in a structured environment that does not contain women
4. other good character traits (specify) _____

NEBRASKA CRIMINAL HOMICIDE STUDY
DATA COLLECTION INSTRUMENT
PROTOCOL FOR CODING

KEATING, O'GARA, DAVIS & NEDVED, P.C.
530 South 13th, Suite A
Lincoln, NE 68508

INSTRUCTION MANUAL FOR CODING NEBRASKA CRIMINAL HOMICIDE STUDY DATA COLLECTION INSTRUMENT

I. DATA SOURCES

The case information files typically contain a number of data sources. The most common ones are summarized below.

1. Trial court opinion.

The trial court opinion, if there is one, can be a primary source for factual summaries as it is presumably the most authoritative. The factual recitations are usually in the beginning of the opinion, but often important facts may be referred to during the legal discussion.

2. Appellate court opinions.

If there has been a direct appeal (and there are in almost all first degree murder cases that go to trial) the appellate court opinion is an excellent source for the facts of the case. For death cases, the Supreme Court opinion is usually very thorough and strong.

3. Presentence investigation/Mental health evaluation.

The presentence investigation report ("PSI") will ordinarily be the most important source of information in a file. The PSI will contain most of the Defendant's biographical information, the criminal history and mental health history. The PSI will often contain descriptions of plea agreements in plead cases. There will often be police reports appended to PSIs.

4. [see Question 3]

5. Docket entries.

It may also have the names of the attorneys and provide information on whether money for experts or investigators was requested. Mental health problems can also sometimes be identified if there was a pre-trial psychiatric exam or commitment. Mental health evaluations are routinely ordered after conviction.

6. Police Reports.

These are usually in the PSI. The police reports should be considered secondary sources for factual narratives in cases that were tried as there is often considerable variance between discovery materials and proof at trial. Police reports are primary sources, however, for non-trial dispositions and for those questions designed to assess prosecutorial decision-making.

7. Information.

These will provide the date of the charge, the original charge, the name of the defendant and the name of the victim.

8. Prior Criminal History.

It is unclear whether we will have access to this material. If we do, it is a primary source for the criminal history of the defendant.

9. Sentencing Order.

We have all of these for all first degree murder convictions, and they were placed in the file during case file development. If it is missing, recheck the original sentencing order books that are in the brown back bindings.

10. County Attorney Reports.

If we have a report on the case, this can be a good source for plea bargain information. It may also have indications of the reasons a prosecutor did not seek the death penalty.

11. Questionnaires.

From time to time, we may send questionnaires to attorneys to resolve particular matters that arise. Some attorneys may respond, others may not.

12. Guilt phase or guilty plea notes of testimony.

For guilty pleas, the evidence recited by the prosecutor can be the primary source for facts of the case. Look for the factual recitation by the prosecutor.

13. Penalty phase notes of testimony.

This is the transcript (ordinarily called the "bill of exceptions" in Nebraska) of what actually occurred at the penalty hearing. If we have a copy of it, it can be a good source for mitigation evidence and will often contain testimony or argument regarding relevant aggravating factors (though in most instances the evidence of aggravating factors emerge in the case-in-chief).

14. State and county adult criminal histories.

Prior criminal histories (PCHs) are a good source of the defendant's prior criminal history if it is available.

15. Juvenile records.

If the PSI contains juvenile records, they may contain both delinquent and dependent adjudications and commitments. They also may show psychiatric commitments.

16. FBI criminal extract.

If available, the FBI records are a primary source for out-of-county criminal records.

17. Death certificate.

The death certificate for the victim is the primary source for race and occupational data of the victim.

18. Autopsy/medical examiner's report.

This report is a primary source for those questions going to the brutality of the killing as it usually contains a description of each wound. It will also contain indications of the race of the victim and sometimes will identify the age of the victim.

19. Attorney Questionnaires and Interviews.

The Study is collecting information from the County Attorney and the Defense Counsel that actually handled the case. Their feedback will be in the form of a response to a questionnaire, which is in the file. It may sometimes be necessary to contact attorneys for certain information. Many times information obtained from attorneys is unreliable and this should be considered a secondary source. Document all calls to attorneys and reduce the substance of the conversation to writing.

20. Defendant/State Attorney General Appeal briefs.

The briefs on appeal often provide better factual recitations than the opinions, and should be used when the trial and appellate court facts are not complete. The State Attorney General briefs tend to be uniformly strong while the defendant's briefs vary greatly. On death cases, however, the defendant's briefs are good sources for mitigation testimony.

21. Uniform Homicide Reports.

These are usually only useful for very basic information that you have probably already obtained elsewhere.

II. CODING UNKNOWN, NOT APPLICABLES AND UNKNOWN COUNTS.

1. Unknowns.

Many times a question will ask whether a certain fact about the case or parties is present but there is simply no indication in the file one way or the other. For example, "Was defendant previously institutionalized for mental illness?" (Q45). If there is no Mental Health Evaluation in the file and no penalty hearing was conducted, it is unlikely you will be able to code this question with any confidence. An "unknown" response is therefore appropriate. If, however, the Mental Health Evaluation makes no reference to prior psychiatric commitments and no claim of mental impairment was made at trial, you should code the question "no." In other words, if the factor would likely appear in the materials in the file but does not, it may be presumed that the factor was not present. If, however, there is insufficient information in the file to reliably make a judgment, answer unknown. In penalty hearing cases, the absence of the factors in most cases may be interpreted as meaning they are not present and should be answered "no." The corresponding instructions provide question-by-question guidance on how to code the questions.

2. Not Applicables.

Typically one variable will be reserved to code the "not applicables". However, to speed up the coding process, you will sometimes be instructed to leave blank certain responses which are not applicable. Thus, the absence of any coding for those variables is interpreted as a "not applicable" response. Blanks are permitted only where specifically authorized in the question. Note also that in some questions, if none of several answers apply, you will be instructed to code only the first of the series with a foil indicating that none of the following is applicable.

3. Exact Count Unknown.

"Count unknown" indicates that an event occurred one or more times, but it is impossible to tell exactly how many times it did occur. For example, it may be clear from the record that the defendant was incarcerated on one or more occasions but it is unclear exactly how many times he or she was so incarcerated. This response is used only as a last resort; for example, if you are unable to determine whether there were four or five incarcerations, it is preferable that you code one or the other rather than "unknown." (See section III below for the principles for resolving ambiguities.)

III. CONFLICTING STATEMENTS AND AMBIGUITIES.

Some of the facts you need to know in completing the questionnaire will have been contested in the judicial proceedings leading to the defendant's conviction and sentence. We have no methods for resolving factual disputes or, ordinarily, for knowing how the triers of fact resolved them. Where there is conflicting evidence on a fact addressed in the questionnaire, two rules should be followed in resolving the dispute. *First, if the fact relates to the basis of the offender's criminal liability, the conflict should be resolved in a direction that supports the determination of the fact finder.* In short, when there are conflicts of testimony and there had been a resolution by a fact finder, the facts should be reported as they might reasonably have been found by a jury which credited the complaining witness, drew all rational inferences from the witnesses testimony against the defendant, discredited the defendant, and resolved any disputable inference in his or her favor.

In cases involving plea bargains, a similar rule should be followed when there is conflicting evidence about the basic elements of the crime. However, if there is no factual dispute and it is plain what the facts were, the entry of a guilty plea and its acceptance by the prosecutor should not militate against your finding the facts to be sufficient to support a conviction for a more serious offense. For example, if it is plain that the defendant intentionally killed the victim, the fact of a plea bargain resulting in a manslaughter conviction should not change your coding that the killing was intentional.

The second rule is that when the record concerning a fact is ambiguous, the interpretation should support the legitimacy of the sentence. Hence in resolving ambiguities, it is important whether the case resulted in a life or death sentence and whether the ambiguity deals with a substantive portion of the DCI or the strength of the evidence portion. In death cases, where the matter deals with substance, favor the interpretation which makes the facts more aggravated; on strength of the evidence questions, favor the interpretation which makes the evidence stronger. On life cases, the opposite is the case. On substantive questions, favor the interpretation that makes the case appear less aggravated and, on strength of the evidence questions, favor the interpretation which makes the evidence appear weaker.

Whenever you encounter an ambiguity which cannot be clearly settled by a written guideline and you exercise some judgment using the forgoing rules, you should note the question under Coder's Notes on the last page of the DCI. Indicate on that sheet the nature of the ambiguity and how you resolved it.

IV. INSTRUCTIONS FOR COMPOSITION OF NARRATIVES AND COMPLETION OF DCI.

A. *Completion of Thumbnails and Narrative Summaries.*

Coders will be responsible for completion of the DCI and preparation of narrative summaries and thumbnail sketches. Before beginning coding, completely familiarize yourself with the facts of the case. You should read the PSI description of the crime and the appellate briefs through a couple of times. Next code the document. We will be reserving designated times each week to go over problems. If there is a question you have trouble coding, answer as best you can but be sure to mark it prominently with a NOTE ARROW STICKER and note the problem on your Coder's Notes page. At the coder's meeting we will review all coding problems and seek to reach a consensus on how it should be coded. After the DCI is coded, compose the narrative. All narratives are prefaced with a thumbnail sketch of the facts. Several examples of these are in the materials. Strive to succinctly capture the essence of the case in four or five sentences. Make sure the aggravating circumstances can be identified from the text of the thumbnail.

Next compose the full narrative. If the trial court's facts are complete or the appellate opinion is complete, you should quote directly from the opinion, and cite the opinion appropriately. Exercise more care if quoting from a State Attorney General's brief or defense brief. The facts as stated are generally reliable but may omit important facts favorable to the other side. Ideally the narrative should be one and one-half to two pages. When you have completed the narrative, go back and recode the document. This will ensure there are no omissions or miscodings in the DCI, as well as uncover any omissions or misstatements of facts in the narrative.

B. *Completion of the Data Collection Instrument (numbers below correspond with question number in DCI).*

Defendant's Name: Enter name as it appears on file.

Proj.#. There is a master list of project numbers in the materials. The number should be on the outside of the file, but check it against the master list. Where there are multiple listings for one defendant, make sure the case number agrees.

Pre-Coder: This is the name of the person that did the case file development on this file. If you don't know it, put unknown in pencil.

Coder: Put your last name.

Supplemental Coder: Only put your name here if you are coding this DCI for a second time, or if you have added supplemental coding pages and coded them.

Reviewed by: Leave blank.

Approved for D/E: Leave blank.

Coder: Put your last name again.

Project Number Put the project number here again

Data Sources: Put a code for every data source that you actually considered, whether you took data from it or not.

Numbered Items:

1. Enter name as it appears on file. If the name has more letters than you have spaces, just continue the name into the blank space.
2. A complete list of county codes are in your coding notebooks. Douglas County is "01"; Lancaster County is "02".
3. Enter the last two digits of the date.
4. Information.
5. The PSI is a good source for the date of the offense.
6. The sentencing order is the best source for the date of sentence.
7. If there was a retrial, either at the guilt or penalty phase, the coder should find the other file and code it as well. The same narrative may be used, but be careful to note if different or additional facts were presented at retrial. If the case was affirmed on direct appeal, code "8" for "not applicable."
8. PSI. Appellate court opinion. Be careful. Sometimes the judge that is the arraigning judge is not the trial judge.
- 8A. If the case did not have a penalty phase trial, this will always be 01. If there was a penalty phase trial, this will be in the Sentencing Order.
- 8B. Enter all three. If there was only one, write N/A in each of the other two lines.
9. PSI. Information. Record counsel at trial is asked for here.
10. Record counsel at trial is asked for here.

11. Record counsel at trial is asked for here. Often new counsel is appointed for post verdict motions after a guilty finding so watch for this. Status of defense counsel is sometimes difficult to pick up.
12. Information. PSI. DC Class Study.
- 12A. PSI. DC Class Study. County Attorney Report.
- 12B. PSI. DC Class Study. County Attorney Report.
13. PSI. DC Class Study. Appellate Opinions. Briefs.
14. Sentencing Order. Appellate Opinions. Briefs.
- 14A. Sentencing Order. Appellate Opinions. Briefs.
- 14B. Sentencing Order. Appellate Opinions. Briefs.
- 14C. Sentencing Order. Appellate Opinions. Briefs.
- 14D. Record of Sentencing Hearing. Sentencing Order. Appellate Opinions. Briefs.
15. PSI. DC Class Study. Sentencing Order. Appellate Opinions. Briefs. FBI histories, juvenile extracts, guideline forms. Code all attempts as the substantive offense except for attempted murder which is coded as attempted murder.
16. If there was a first degree murder conviction, this should be coded "Yes" if the prosecution presented any evidence of aggravating circumstances. Additionally, in a few cases, however, the only record of the penalty phase is a notation or a short order indicating that the State "waived" the penalty phase, and the parties had agreed to a sentencing recommendation. Such cases should be coded "No."
17. PSI. Sentencing Order. Appellate Opinions. Briefs. PSI will often indicate the plea that was negotiated. The County Attorney report to the State Court Administrator may also have this information. You should presume the decision not to seek death was unilateral unless there was some indication in the file to the contrary. Code unknown only if there is an indication that the decision was not unilateral but the precise reason was unknown (e.g., defendant waives jury in highly aggravated case).
18. Check the Gerry Soucie spreadsheet for this first, and then verify the accuracy of that information. Sentencing order.
19. Check the Gerry Soucie list for this first if the DF was convicted of first degree murder, and

then verify the accuracy of that information. Otherwise run on PREMISE by last name.

20. PSI. DC Class Study.

21A. PSI. DC Class Study. Usually this will be 1 or 2 and will not be difficult to i.d. Do not strain to find information for coding choices 3,4, and 5. The entries for 3, 4, and 5 are for cases where this gender i.d. characteristic is prominently presented in the facts of the case, or was prominent in the motivation for murder. There are a few notorious murders involving these gender identifications, and these are indicated in the coding to reach those cases.

21B-D. PSI. DC Class Study.

22. Birthplace may be difficult to pick up. Check the PSI first. If there is an arrest report in file, this may indicate birthplace as well.

23. PSI. DC Class Study.

24. PSI. DC Class Study.

25. PSI. DC Class Study.

26. PSI. DC Class Study.

27. PSI. DC Class Study.

27A. PSI. DC Class Study.

28. PSI. DC Class Study.

29. PSI. DC Class Study.

30. PSI. DC Class Study.

30A. Code 6 if more than six.

31. PSI. DC Class Study.

32-43. PSI, DC Class Study, and PCH.

Code all weapons offenses as non-violent unless there is an indication it was used in a threatening manner (e.g. defendant convicted of simple assault as well). In Q43, for columns C and E, which count "victims", code victimless crimes as having one victim.

44-66. (Section C Generally) (see below for specific instructions).

This section is designed to focus more acutely on what information was available to the decision-maker at the point of decision. Column A can come from any source. Column B reflects facts known to the prosecutor and may come from any materials other than the penalty phase testimony. Column C assesses sentencing decisions and should derive solely from trial notes, or summaries of trial testimony. One common problem occurs when there is no mention of the factor in the file. When should the factor be coded as not present and when should it be coded as missing? Some general rules apply.

- a. In non-penalty hearing cases, if strong background materials are present in the file and no mention of the factor is made, code it as not present.
- b. If no penalty hearing was conducted and the file does not contain background sources, code it as missing. Exceptions to these rules are noted below where applicable.

For penalty hearing cases, the absence of factors generally recognized as mitigating is a strong indicator that the factor did not obtain. Also, where the question has a direct analogue to statutory mitigating circumstances, you may infer that the factor did not obtain if it was not presented. There are also specific rules for penalty hearing cases depending on how complete the file may be.

44. PSI. Penalty hearing.
45. PSI. Penalty hearing.
46. PSI. Penalty hearing.
47. PSI. Juvenile extract.

If no indication of institutionalization in juvenile court history, code "0" (none). Do not count if sentenced to prison as certified adult. If no mention of the factor is made at the penalty hearing, code "no."

48. PSI. DC Class Study.
49. PSI. Penalty hearing.
50. PSI. DC Class Study.
51. PSI. DC Class Study. Appellate court opinion.
52. PSI. DC Class Study. Appellate court opinion.

53. Trial/appellate court opinion. Penalty hearing. PSI. Penalty phase notes. For non-penalty hearing cases, code "9" for "unknown" if PSI or other background materials are unavailable.
54. PSI. DC Class Study. Code "0" if no indication in file.
55. PSI. DC Class Study.
56. PSI. DC Class Study. Code "0" if no indication in file.
57. PSI. DC Class Study. Code "0" if no indication in file.
58. PSI. DC Class Study. If no indication of abuse in non-penalty hearing cases, code "0" if some evidence of stable family life; otherwise code unknown.). If there is not evidence of abuse alleged in penalty phase cases, code "0" for "no." Do not assume that a two parent home without more is stable). Otherwise code unknown.
59. PSI. DC Class Study. Penalty hearing. Code "9," unknown, if early history is weak.
60. PSI. DC Class Study. Penalty hearing. If no indication in file, code "9" for unknown. Code "9," unknown, if early history is weak.
61. PSI. DC Class Study. Penalty hearing. Juvenile court record. If family history is weak, code "no" if adjudication regarding parental rights on juvenile extract.
62. PSI. DC Class Study. Penalty hearing. "Foster care" is defined as any dependent placement, including group homes and institutions. If no indication of adjudication of dependency in juvenile court history, code "0."
63. PSI. DC Class Study.
64. PSI. DC Class Study. Code "9" for "unknown" if background data is weak.
65. PSI. DC Class Study.
66. PSI. DC Class Study.
67. PSI. DC Class Study.
68. PSI. DC Class Study. Death certificate.
- 69A-C PSI. DC Class Study. Death certificate.
70. PSI. DC Class Study. Police reports. Appellate court opinions. Round down if only year of

birth known.

- 71. PSI. DC Class Study. Appellate court opinions, death certificate.
- 72. PSI. DC Class Study. Appellate court opinions. Do not code "no" unless the file clearly indicates.
- 73. PSI. DC Class Study. Appellate court opinions.
- 74. PSI. DC Class Study. Appellate court opinions. Code "14" if location of offense was any victim's place of business.
- 74A. PSI. DC Class Study. Information.
- 75. PSI. DC Class Study. Appellate court opinions. Police reports.
- 76. PSI. DC Class Study. Appellate court opinions. Police reports.
- 77. PSI. DC Class Study. Appellate court opinions.
- 78. PSI. DC Class Study. Appellate court opinions. If two weapons of same type are used (e.g., two different revolvers), code one as primary and the other as secondary.
- 79. PSI. DC Class Study. Appellate court opinions. Police reports.
- 80. PSI. DC Class Study. Appellate court opinions. Police reports.
- 81. PSI. DC Class Study. Appellate court opinions. Code drive by shootings as "19" (luring, ambush, lying in wait). "Multiple victims" (16) means multiple decedents.
- 82. PSI. DC Class Study. Appellate court opinions. Police reports.
- 83. PSI. DC Class Study. Appellate court opinions. Police reports.
- 84. PSI. DC Class Study. Appellate court opinions. Police reports.
- 85. PSI. DC Class Study. Appellate court opinions. Autopsy. Police reports.
- 86. PSI. DC Class Study. Appellate court opinions. Police reports.
- 87. PSI. DC Class Study. Appellate court opinions. Police reports.
- 88. PSI. DC Class Study. Appellate court opinions. Police reports.

89. PSI. DC Class Study. Appellate court opinions. Police reports.
90. PSI. DC Class Study. Appellate court opinions. Police reports.
91. PSI. DC Class Study. Appellate court opinions. Do not code lack of remorse unless there is affirmative showing of this, such as bragging, open defiance, or threat to do it again.
92. PSI. DC Class Study. Appellate court opinions. Police reports.
93. PSI. DC Class Study. Appellate court opinions. Police reports. Physically means physically, i.e., the actual "laying on of hands."
94. PSI. DC Class Study. Appellate court opinions. Police reports.
95. PSI. DC Class Study. Appellate court opinions. "Other" refers to non-decedents.
96. PSI. DC Class Study. Appellate court opinions. If 95 coded as "9," code 96 as "9."
97. PSI. DC Class Study. Appellate court opinions. If the number of shots fired is known and the defendant and the coperpetrator fired but it is not known how many each fired, split the difference by apportioning half to one and half to the other.
98. PSI. DC Class Study. Appellate court opinions. Police reports. Disputes can generally be characterized as either long-term ones which ultimately erupted into lethal violence, or specific relatively recent ones resulting in a retaliatory or revenge killing. Prior harm need not be physical harm but can include any conduct for which the defendant may have felt "wronged." Code as many responses as appropriate.
 - II(a): Interpret "at the time of the killing" strictly.
 - II(b): Interpret "contract" broadly.
99. A coperpetrator need not have been arrested and charged.
100. PSI. DC Class Study. Appellate court opinions. Police reports.
101. For foil B(3), primary assailant is the one whose conduct was the most likely cause of death. For example, if the decedent died as a result of a shot fired by the defendant, the defendant is the primary assailant even though others may have participated in the attack.
102. PSI. DC Class Study. Appellate court opinions.
103. The defense is sometimes difficult to pick up. The opinions and briefs are usually the best source because often issues raised on appeal concern the defense in some way.

104-108 [RESERVED].

- 109. PSI. DC Class Study. Appellate court opinions. Identification is "in issue" if there were witnesses that placed defendant at or near scene, even if defendant admits presence.
- 110. PSI. DC Class Study. Appellate court opinions.
- 111. PSI. DC Class Study. Appellate court opinions.
- 112. PSI. DC Class Study. Appellate court opinions. Identification is "in issue" if there were witnesses that placed defendant at or near scene, even if defendant admits presence.
- 113. PSI. DC Class Study. Appellate court opinions. Identification is "in issue" if there were witnesses that placed defendant at or near scene, even if defendant admits presence.
- 114. PSI. DC Class Study. Appellate court opinions. Identification is "in issue" if there were witnesses that placed defendant at or near scene, even if defendant admits presence.
- 115. PSI. DC Class Study. Appellate court opinions. Police reports.
- 116. If previously known to each other by sight, code as casual acquaintance.
- 117. PSI. D C Class Study. Appellate court opinions.
- 118. PSI. D C Class Study. Appellate court opinions. Police reports. The question is looking for statements given to the police *prior* to trial, not at trial or guilty plea. It need not be a confession.
- 118A. PSI. D C Class Study. Appellate court opinions. Police reports. Often a defendant will make incriminating admissions to people other than the police.
- 119. PSI. D C Class Study. Appellate court opinions. Police reports.
- 120. PSI. D C Class Study. Appellate court opinions. Police reports.
- 121. PSI. D C Class Study. Appellate court opinions. Police reports.
- 122. PSI. D C Class Study. Appellate court opinions. Police reports.
- 123. PSI. D C Class Study. Appellate court opinions. Police reports.
- 124. PSI. D C Class Study. Appellate court opinions. Police reports.

125. PSI. D C Class Study. Appellate court opinions. Police reports.
126. PSI. D C Class Study. Appellate court opinions. Police reports.
127. PSI. D C Class Study. Appellate court opinions. Police reports. Assume the weapon was not found if no indication it was introduced at trial and the file was otherwise silent on this point.
128. PSI. D C Class Study. Appellate court opinions. Police reports.
129. PSI. D C Class Study. Appellate court opinions. Police reports.
130. PSI. D C Class Study. Appellate court opinions. Police reports.
131. PSI. D C Class Study. Appellate court opinions. Police reports.
- 131A. PSI. D C Class Study. Appellate court opinions. Police reports.
132. *Column A (Procedural).*

Column A records strictly procedural information and should require no coding judgments on your part. The progression is a logical one, reflecting all possible procedural steps in the ultimate proof of the statutory aggravating circumstance: the election to present evidence of the aggravator at penalty hearing, the decision of which aggravating circumstances to pursue, and finally the fact-finder's determination of whether the factor was found. If defendant was acquitted of contemporaneous offense, code as insufficient. Code "4" if there is some evidence and "blank" if none.

Column B (Evidence).

The following typology should be used for coding Column B. At the end of this protocol are the basic descriptions of the law for each aggravator. At the end of this protocol are the basic descriptions of the law for each aggravator. Code for all cases.

1. Strong - Elements clearly made out and no controlling issue as to reliability of evidence.
2. Legally sufficient - Facts are legally sufficient to establish aggravating circumstance but where a reasonable fact-finder, exercising his or her discretion, could find or not find the circumstance; no issue of reliability of evidence exists.
3. Sufficient, with evidentiary issue(s) - Facts are legally sufficient to establish aggravating circumstance but where finding rests on acceptance of evidence that is in issue or of questionable reliability.
4. Insufficient - Some evidence of aggravating circumstance but even if accepted would not survive a sufficiency challenge.

Blank = No indication that circumstance may be present

133. *Column A (Procedural).*

Column A records strictly procedural information and should require no coding judgments on your part.

Column B (Evidence).

The following typology should be used for coding Column B. At the end of this protocol are the basic descriptions of the law for each mitigator.

1 = Strong - Strong evidence of the presence of the circumstance.

2 = Sufficient - Sufficient evidence for fact-finder to find circumstance by the preponderance of the evidence.

3 = Questionable - Some indication of circumstance but either derives from questionable source or is of questionable relevance or validity as mitigating circumstance; judge(s) failure to find circumstance present would likely be upheld.

Blank = No evidence

In some cases, we only know that the court found "other" mitigating circumstances generally. In others, we know which specific "other" mitigating circumstances. If specific circumstances were found, code both J and K (other generally) and O (other specific). These specific mitigating circumstances should be included in the narrative.

134. Trial/appellate court opinions, police reports, PSI, Mental Health Evaluation.

135. Trial/appellate court opinions, police reports.

XII. Arnold Barnett.

This is largely a non-statutory typology. The questions should be answered based on the entire file.

XIII. Homicide Typology.

RESERVED.

THE (VERY) BASICS OF AGGRAVATORS AND MITIGATORS IN NEBRASKA LAW

1. Aggravators

A. The Defendant was previously convicted of another murder or a crime involving the use or threat of violence to the person [Neb. Rev. Stat. § 29-2523(1)(a)].

In General. Do not code the presence of this aggravator if the prior conviction is invalid. *United States v. Tucker*, 404 U.S. 443 (1972). Proof of a prior conviction for the purposes of this aggravator requires that the prior conviction be for a crime involving violence or the threat of violence to the person. Crimes involving violence would include all first degree assaults and other assaults for which you have evidence that there is cognizable and significant violence. Do not code this factor as being present if the only assault is a third degree assault and/or there is no evidence of violence with respect to the assault in the record. *State v. Birdhead*, 225 Neb. 822, 408 N.W. 2d 309 (1987).

[The following are additional instructions provided in a memo to the coders of June 22, 2000, after discussions with prosecutors and defense counsel on the threshold for 1(a), which supported the following consensus].

To code the first prong of 1(a) as being present, the offender must have a conviction of a crime of at least the level of seriousness as the following:

Non-sexual Assaults: First Degree Assault

Second Degree Assault, but only if there is clear evidence of the use of a weapon

Sexual Assaults: First Degree Sexual Assault (if forcible, i.e. statutory rape will not qualify unless there is evidence that the rape included use of force)

Second Degree Sexual Assault, but only if there is clear evidence of the use of a weapon

Robbery is codeable as a 1(a) crime; burglary is not a 1(a) crime.

Kidnapping is a 1(a) crime, but false imprisonment is not codeable as a 1(a) crime unless the record and facts are clear that the false imprisonment was a plea from an original charge of kidnapping.

There must be an actual conviction for the charge, and where there is an ambiguity on the record of whether there was an actual conviction, the presumption is to be that there is no conviction.

B. The Defendant had a substantial history of serious assaultive or terrorizing criminal activity [Neb. Rev. Stat. § 29-2523(1)(a)].

With respect to the “substantial history” portion of 1(a), history does not include any matters which occur either after the homicide involved in a case or those occur at approximately the same time as the homicide. *State v. Holtan*, 197 Neb. 544, 250 N.W. 2d 876 (1977). However, the Nebraska Supreme Court has held that a prior history is shown where a murder occurred five days prior to the murder for which the defendant is on trial. *State v. Moore*, 210 Neb. 457, 316 N.W. 2d 33 (1982). After that the court held that because the previous murder was sufficiently removed from the second murder it was separate incident and therefore satisfied the definition of “history”. *Id.* See also, *State v. Joubert*, 224 Neb. 411, 399 N.W. 2d 237 (1986) (1a applies where prior murder occurred 75 days prior to the murder under consideration.)

[The following are additional instructions provided in a memo to the coders of June 22, 2000, after discussions with prosecutors and defense counsel on the threshold for 1(a), which supported the following consensus].

To code the second prong of 1(a) as being present, the offender must have two or more convictions for a crime of at least of a level of seriousness as that described below, or, if there is no conviction, we must have substantial evidence that the crime occurred, and a sufficient description of the nature of the crime to assess its level of seriousness. Crimes that qualify as “serious assaultive behavior” include crimes of at least of a level of seriousness as the following:

Non-sexual Assaults: First Degree Assault

Second Degree Assault, but only if there is clear evidence of the use of a weapon

Sexual Assaults: First Degree Sexual Assault (if forcible, i.e. statutory rape will not qualify unless there is evidence that the rape included use of force)

Second Degree Sexual Assault, but only if there is clear evidence of the use of a weapon

Robbery is codeable as a 1(a) crime; burglary is not a 1(a) crime.

Kidnapping is a 1(a) crime, but false imprisonment is not codeable as a 1(a) crime unless the record and facts are clear that the false imprisonment was a plea from an original charge of kidnapping.

As discussed above, generally there must be two or more crime of the quality described above to code this prong of aggravator 1(a) as present. However, if the prior crime is murder, this aggravator is present even though there is only one prior crime. See State v. Moore (I).

Each time a coder codes 1(a) as being present, you should record in the thumbnail sketch the crime which provides the basis for the coding. Furthermore, you should highlight in the file the location of the information that was used as a basis for the code.

NOTE ON CODING ROBBERY AND JUVENILE CONVICTIONS: When coding a “robbery” crime, coders should distinguish between robberies on rap sheets of adults from those of children under the age of 18. For adults, all robbery convictions should be coded as meeting 1(a), except where there is affirmative evidence that the offender was charged only as an accomplice, and the offender’s role in the robbery was minor and did not involve the use of violence.

We often have very limited information regarding the circumstances of juvenile robberies. Furthermore, courts are very reluctant to impose 1(a) liability upon an offender based upon juvenile convictions, unless such convictions are for highly aggravated crimes. Accordingly, where there is a juvenile robbery conviction on a person’s record, coders should not code the aggravator 1(a) as present unless there is affirmative evidence in the file that the juvenile robbery involved the offender’s own use of significant violence or a weapon in the robbery, and the juvenile was sentenced to 1 year or more in a juvenile or adult facility for the crime.

C. The murder was committed with an apparent effort to conceal the commission of a crime [Neb. Rev. Stat. § 29-2523(1)(b)].

This aggravator applies in those cases where the “only logical conclusion” for the purpose of the murder is to eliminate a witness. *State v. Reeves*, 234 Neb. 711, ____ N.W. 2d ____ (1990); *State v. Peery*, 199 Neb. 656, 261 N.W.2d 95 (1977), *cert. den’d*, 439 U.S. 882 (1978). A murder is also for the purpose of concealing a crime also only where the murder would prevent the discovery of a crime not otherwise likely to be discovered. *State v. Rust*, 197 Neb. 528, 250 N.W. 2d 867 (1977). Furthermore, this factor does not exist where the evidence is that the murder renders the victim incapable of identifying the perpetrator, but there is no evidence that was the purpose of the defendant engaging in the homicide. *State v. Hunt*, 220 Neb. 707, 371 N.W. 2d 708 (1985).

The clearest case that any case presence this aggravator is in a case in which a crime is being committed against one person and after the crime is completed, another person arrives at the scene of the crime to investigate what is happening, and the defendant kills the second person as well. See *State v. Reeves*, Supra. Another clear case in the Nebraska Supreme Court authority is the case in which a defendant admitted that he did not believe the victims claim that if the defendant let him go that he would not go to the police. *State v. Joubert*, Supra. This aggravator can be shown by where there is evidence to show that the murder was to prevent identification of the defendant or a co-perpetrator, even if there was not enough evidence to prove that the motive was to conceal the commission of the crime itself. *State v. Rust*, 197 Neb. 528, 250 N.W. 2d 867 (1977).

This aggravator would not apply where the evidence indicates that the defendants initial purpose in the killing was other than concealing the crime. For example, in *State v. Hunt*, 220 Neb. 707, 371 N.W. 2d 708 (1985), the Nebraska Supreme Court held that because the jury had apparently concluded that the defendant went to the victim's home with the intention of killing her so that he could fulfill a sexual fantasy of having sex with a corpse, 1(b) did not apply. Similarly, where there is another overriding motive for killing the victim, such as revenge or in a contract killing, 1(b) would presumably not apply.

D. The murder was committed with an apparent effort to conceal the identity of the perpetrator of a crime [Neb. Rev. Stat. § 29-2523(1)(b)].

See discussion of aggravator directly above.

E. The murder was committed for hire, or for pecuniary gain [Neb. Rev. Stat. § 29-2523(1)(c)].

Code this aggravator as applicable if the murder itself is primarily committed to obtain a pecuniary gain in a strict sense. For example, 1(c) applies to somebody who is hired to commit murder or hires someone else to commit a murder, or if someone commits a murder to recover insurance proceeds, or if someone who commits a murder who is a beneficiary of the victim's will. However, the aggravator does not apply unless the murder itself was intended to attain the monetary gain itself. Accordingly, a murder that is committed in the course of a robbery is ordinarily not the type of murder that is subject to a 1(c) aggravator. Moreover, where the murder appears to have been committed to conceal a crime or the identity of the perpetrator, 1(c) will not ordinarily apply, even though the defendant obtained some monetary gain during the crime. *State v. Stuart*, 197 Neb. 497, 250 N.W. 2d 849 (1977); *State v. Rust*, 197 Neb. 528, 250 N.W. 2d 867 (1977).

F. The Defendant hired another to commit the murder for the Defendant [Neb. Rev. Stat. § 29-2523(1)(c)].

See discussion of 1(c) directly above.

G. The murder was especially heinous, atrocious, cruel, or manifested exceptional depravity by ordinary standards of morality and intelligence [Neb. Rev. Stat. § 29-2523(1)(d)].

The framework that should be applied when coding the existence of 1(d) follows. Thumbnail sketches should distinguish between the two prongs of 1(d) whenever possible, and should identify the category below that applies to the crime. As always, where the presence of an aggravator is very close, deference should be given to the coding that is most consistent with the charging behavior, or with the sentencing court's sentence on the aggravator. If there was no penalty trial, the resolution of close questions should be resolved against finding the aggravator present.

This aggravator should be coded as present where there is an “overwhelming” basis in the evidence for finding one of the two following prongs exists:

A. Especially Heinous, Atrocious and Cruel.

- (1) Rape with sexual abuse aggravation beyond only physical control and penetration, or
- (2) Rape with status of the victim (age, very young, or elderly) White, and Carter, or
- (3) Where there is “torture, sadism, imposition of extreme suffering. . . “ or
- (4) Defendant’s method of killing indicates that defendant had intent to cause serious mental, emotional, or physical pain.

E.g. -use of multiple weapons in extended assault
-use of substantially gratuitous violence (substantially more than necessary to cause death) or over extended period of time

B. Exceptional Depravity

1. Coldly Calculated

Marked by substantial evidence of one of the following:

- A. Intentional selection of victims on the basis of an identity characteristic (e.g. sexual orientation, gender, race, age); or,
- B. Experimentation with the method of killing prior to the murder, or
- C. Extended or non-trivial preparation for murder involving a non-trivial amount of time and effort (e.g. determining intent to kill, and then travelling to another site to obtain weapons and returning, hatching a complicated plan to murder)

and/or

2. “Senselessly bereft of the value or dignity of human life. . . “

Meets one of the five State v. Palmer (1986) factors:

- A. evidence that defendant relished the murder or the death of the victim;
 - B. gratuitous violence (substantially more violence engaged than necessary to cause death);
 - C. needless mutilation of the victim (before or after death);
 - D. helplessness of the victim, and the victim is murdered while wholly unable to resist. (e.g. bound; completely physically restrained by defendant or coperpetrators; young child under the full physical control of the defendant), or,
 - E. senselessness of the crime.
- H. **At the time the murder was committed, the Defendant also committed another murder [Neb. Rev. Stat. § 29-2523(1)(e)].**

This aggravator is straightforward; it requires that the defendant have killed a second victim at or about the same time as the defendant has killed the first victim. *State v. Reeves, supra*; *State v. Simants*, 197Neb. 549, 250 N.W.2d 881 (1997). However, 1(e) is not shown where the defendant has merely attempted to kill a second victim, but does not actually do so. *State v. Stewart, supra*.

- I. **The Defendant knowingly created a great risk of death to at least several persons [Neb. Rev. Stat. § 29-2523(1)(f)].**

This aggravator applies to the unique situation “where the act of the defendant jeopardizes the lives of more than two other persons, such as the use of bombs or explosive devices, indiscriminate shooting into groups, or a number individuals, or other like situations”. *State v. Stewart*, 197 Neb. 479, 250 N.W. 2d 849, 865 (1977). However, this aggravator is not present where the defendant independently killed multiple persons at or about the same time as each other. Moreover, it will not apply where the defendant has attempted to murder only a second victim. *State v. Stewart, supra*.

Aggravator 1(f) Where defendant shot “at least three police officers, wounding two of them” the aggravator is clearly shown. *State v. Rust*, 197 Neb. 528, 250 N.W. 2d 867, 874(1974). Where defendant fired on three victims at close range actually killing one and wounding another was sufficient to show aggravator 1(f). *State v. Holtan*, 197 Neb. 544, 250N.W. 2d 876, 880(1977). This aggravator does not apply simply because the defendant kills more than one or two persons. The focal point is on the act of the defendant and the risk presented by the act itself, *State v. Simants*, 197 Neb. 549, 250 N.W. 2d 881, 891(1977). The mere presents of others in a house at the time the defendant killed a person in the house does not satisfy 1(f). *State v. Reeves*, 239 Neb. 419, 476 N.W.2d 829, 839 (1991).

- J. **The victim was a law enforcement officer or a public servant having the custody of the**

Defendant or another [Neb. Rev. Stat. § 29-2523(1)(g)].

It is important to understand that this aggravator does not apply simply because the victim is a law enforcement officer. Rather, the Nebraska Supreme Court has clearly stated that 1(g) only applies when the law enforcement officer has a defendant, or another defendant in custody at the time of the murder. *State v. Reynolds*, 235 Neb. 662, _____ N.W. 2d _____ (1990).

- K. **The Defendant committed the crime to disrupt or hinder the lawful exercise of any governmental function or the enforcement of the laws [Neb. Rev. Stat. § 29-2523(1)(h)] (CHECK against 1(i) for crimes committed after July 15, 1998).**

This is the aggravator that applies if the police officer is killed in the line of duty by a defendant, when the police officer does not have custody of the defendant at the time of the murder (only applies to homicides of law enforcement officers committed before July 15, 1998; continues to apply homicides of persons who are not law enforcement officers beyond July 15, 1998.) *State v. Reynolds, supra*. The Nebraska Supreme Court has also held that this factor applies when the victim is a private citizen, where the victim was engaged in an attempt to assist police officers in apprehending a defendant at the time the victim was killed. *State v. Rust, supra*. However, this factor does not apply when a witness to crime is killed, simply because that witness might take part in the subsequent enforcement of the law against that defendant. *State v. Rust, supra*. Instead, in order for the murder of a lay person to provoke this aggravator, the lay person had to have been involved in a lawful exercise of a governmental function or enforcement of the laws and the defendant's murder was an attempt to hinder that action. *Id.*

12. **Victim was a law enforcement officer engaged in the lawful performance of his or her official duties as a law enforcement officer and the offender knew or reasonably should have known that the victim was a law enforcement officer. (ONLY for homicides committed AFTER JULY 15, 1998) [Neb. Rev. Stat. § 29-2523(1)(i)].**

This is the aggravator that applies if the police officer is killed in the line of duty by a defendant, when the police officer does not have custody of the defendant at the time of the murder (For homicides committed on or after July 15, 1998). Code only if the offender knew or should have known that the victim was a police officer.

2. Mitigators

- A. **The Defendant has no significant history of prior criminal activity [Neb. Rev. Stat. § 29-2523(2)(a)].**

The Nebraska Supreme Court has held that “significant history” does not refer to a “slight or inconsequential history of criminal activity” but rather to “an important, notable, or meaningful history.” *Holtan*, 197 Neb. at 548. The mere existence of a prior criminal record does not negate the existence of this mitigator. *State v. Simants*, *supra*. For example, in *Simants*, the Nebraska Supreme Court found that the defendant’s prior criminal history, consisting of several misdemeanor convictions, and a statutory rape which was not charged or prosecuted, did not constitute a significant history of prior criminal history.

Prior criminal history that would disqualify a defendant for this mitigator would include both adjudicated and unadjudicated criminal activity. *State v. Reeves*, 234 Neb. at 721. The law does not appear to require the State to prove the absence of the mitigator beyond a reasonable doubt in order for the mitigator to not apply. *Reeves*, *supra*. Moreover, prior uncounselled convictions are permitted to be considered by the court when judging whether this mitigator applies to a defendant. *Reeves*, *supra*.

This mitigator only concerns criminal history that was prior to the homicide. Crimes committed after the homicide do not count against a defendant on this mitigator. *State v. Moore*, *supra* at 471.

The law is unclear as to whether and what type of juvenile offenses can be considered for the purposes of this mitigator. The protocol is that any offense that would be subject to consideration for an adult under aggravator 1(a) would also be subject to consideration with respect to a juvenile with respect to this mitigator. Please refer to the coding instructions on aggravator 1(a).

B. The Defendant acted under unusual pressures or influences or under the domination of another person [Neb. Rev. Stat. § 29-2523(2)(b)].

This mitigator is limited to “external pressures, not those a defendant chooses to create for himself.” *State v. Peery*, 199 Neb. at 676.

C. The Defendant committed the crime while the Defendant was under the influence of extreme mental or emotional disturbance [Neb. Rev. Stat. § 29-2523(2)(c)].

This is not the mitigator that applies to someone who is under the influence of drugs or alcohol at the time of the murder. Rather, that should be indicated as a 2(d) mitigator. This mitigator applies when the defendant shows that he suffered from a mental or emotional disturbance, either generally speaking, or that one was caused by the circumstances just prior, or in which the crime occurred. *State v. Rust*, *supra*. The term “extreme” does not appear to be a strong limitation on the applicability of this mitigator. See *Rust*, *supra*.

D. The age of the defendant at the time of the crime [Neb. Rev. Stat. § 29-2523(2)(d)].

Youth and old age can both be considered here. A 17-year old is entitled to this aggravator,

State v. Stewart, supra, while a 24-year old is not. *State v. Reeves, supra*.

After an as of yet undetermined date in 1982, no person can receive the death penalty if they were 18 or younger at the time of the homicide. Neb. Rev. Stat. § 28-105.01 (1997). Review the memo on this basis for exclusion, which will identify the effective date of this legislation. If you have a case where the defendant was 18 or younger at the time of the homicide, please flag that case and bring it to the attention of Mr. Young or Ms. Winner.

E. The offender was an accomplice in the crime committed by another person and his participation was relatively minor [Neb. Rev. Stat. § 29-2523(2)(e)].

The death penalty is rarely sought against a person whose actual role as an accomplice in the murder was very minor. Accordingly, this mitigator is unlikely to be an issue. However, it should be coded if present.

F. The victim was a participant in the Defendant's conduct or consented to the act [Neb. Rev. Stat. § 29-2523(2)(f)].

There is no law interpreting this mitigator. You should code this as being present in "mercy killing" cases, where there is evidence presented that the Victim directed or asked the defendant to kill them as a matter of mercy. Other instances would include where the defendant and victim were voluntarily playing games of chance together that presented risks to each other's lives. Note each of these codings on your coder's note sheets.

G. At the time of the crime, the capacity of the Defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was impaired as a result of mental illness, mental defect or intoxication [Neb. Rev. Stat. § 29-2523(2)(g)].

Generally, a minimal level of impairment is all that is required for this mitigator to be present. *State v. Williams*, 205 Neb. 56, 287 N.W.2d 18 (1979)(anti-social personality and slight alcohol intoxication "in some manner diminished the defendant's capacity to conform his conduct to the [law]."

If the impairment is non-alcohol or drug abuse related, the defendant will usually put on expert testimony with respect to a mental illness. If there is no expert testimony, the lay evidence of impairment should be significant before coding this mitigator as present.

3. Mitigation Detail

See Mitigation Detail Codebook.